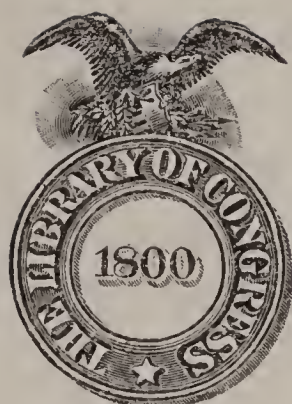


TE

324

.I 3

1873



7189.2

THE
HIGHWAY SYSTEM;

OR A

COMPENDIUM OF THE STATUTES AND DECISIONS

PERTAINING

TO ROADS AND BRIDGES, AND HIGHWAYS GENERALLY, IN THE
STATE OF ILLINOIS, WITH THE USUAL FORMS AND PRE-
CEDENTS FOR ESTABLISHING, ALTERING, MAIN-
TAINING, AND VACATING ROADS, SUP-
PORTED BY COPIOUS NOTES
AND REFERENCES

BY EDWARD J. HILL.

11

CHICAGO:

E. B. MYERS, LAW PUBLISHER,

93 WASHINGTON STREET.

1873.

M

TE 324
I 3
1873

Entered, according to Act of Congress, in the year eighteen hundred and
seventy-three,

BY EUGENE B. MYERS,

In the office of the Librarian of Congress, at Washington.

20-23267

PREFACE.

THIS compilation is intended for the use of public officers. It contains the text of the Acts of 1873 relating to Roads and Bridges, and numerous forms suggested for the purpose of meeting the requirements of such Acts. No claim to originality is made in the production of this work. The points aimed at are utility and convenience.

Chicago, June 2, 1873.

SUMMARY OF CONTENTS.

SECTION I.

INTRODUCTION — HIGHWAYS GENERALLY, - - -	1 - 7
--	-------

SECTION II.

ROADS AND BRIDGES IN COUNTIES UNDER PRIMARY ORGANIZATION, - - - - -	7 - 60
--	--------

SECTION III.

ROADS AND BRIDGES IN COUNTIES UNDER TOWNSHIP ORGANIZATION, - - - - -	61 - 151
---	----------

SECTION IV.

STREETS AND ALLEYS, - - - - -	151 - 154
-------------------------------	-----------

SECTION V.

RIVERS AND FERRIES, - - - - -	155 - 163
-------------------------------	-----------

SECTION VI.

RAILWAYS AND CANALS, - - - - -	164 - 173
--------------------------------	-----------

SECTION VII.

TURNPIKES, TOLL BRIDGES, AND PLANK ROADS, - -	174 - 176
---	-----------

SECTION VIII.

PRIVATE WAYS, - - - - -	176 - 178
INDEX,* - - - - -	179

* A complete analytical and alphabetical index will be found at page 179, concluding this volume. See "Primary Organization" and "Township Organization" in this index for further particulars.

TABLE OF CASES.*

Adsit v. Brady, 4 Hill 630.....	68
Allison v. Commissioners of Highways, 54 Ill. 170.....	34, 109
Alvord v. Ashley, 17 Ill. 363.....	13, 15, 154
Anderson, Gale v. 13 Ill. 443.....	158
Artcher, Mohawk, etc. v. 6 Paige 83.....	118
Ashley, Alvord v. 17 Ill. 363.....	13, 15, 154
Aspinwall, Todemier v. 43 Ill. 401.....	27
Aurora v. Reed, 58 Ill. 29.....	151, 152
Baker, Warne v. 24 Ill. 351.....	141
Baker, Warne v. 35 Ill. 382.....	104
Barker v. Loomis, 6 Hill 619.....	66
Bartlett v. Crozier, 17 Johns. 452.....	66, 68
Baumgarten, Commissioners of Highways v. 41 Ill. 254.....	108
Bay, City of Bloomington v. 42 Ill. 503.....	14
Beckwith v. English, 51 Ill. 147.....	109
Benedict v. Gort, 3 Barb. 469.....	102
Betts v. Menard, Breese Appendix 10.....	158
Beyer v. Tanner, 29 Ill. 135.....	35
Bickerdike v. Deau, 21 Ill. 199.....	38
Black, Railroad Co. v. 58 Ill. 33.....	170
Bolles, Dudley v. 24 Wend. 465.....	64
Bond Co., White Administrator v. 58 Ill.....	67
Brace v. N. Y. Central R. R. Co., 27 N. Y. 269.....	13
Brady, Adsit v. 4 Hill 630.....	68
Briggs, Radway v. 37 N. Y. 256.....	13
Brooklyn, Radcliff v. 4 N. Y. 203.....	102
Brooks v. Hart, 24 N. H. 307.....	64
Brown Co. Commissioners, Nealy v. 1 Gilm. 10.....	13, 25
Brown, County of Sangamon v. 13 Ill. 207.....	26, 36
Brown, Mills v. 2 Scam. 549.....	158
Brown, Stephani v. 40 Ill. 428.....	39

* Very many of the citations are to the reports of other states. We have given the full title to cases at home, and those recognized by the supreme court, as tabulated.

Bullerdick, Gear v. 34 Ill. 75	158
Burdick v. Warrall, 4 Barb. 596	64
Bussell v. Town of Steuben, 57 Ill. 35	67
Busson, Town of Vinegar Hill v. 42 Ill. 45	15
Canal Trustees v. Haven, 11 Ill. 554	23, 152
Canal Trustees, Hoes v. 14 Ill. 402	25
Carr, Wayde v. 2 Dow. & Ry. 255	8
Caywood, Walker v. 31 N. Y. 51	66
Center v. Finney, 17 Barb. 94	65
Chamberlain, Robinson v. 34 N. Y. 380	68
Chambers, Dundy v. 23 Ill. 369	159
Champlin v. Morgan, 20 Ill. 181	26
Chicago v. Gallagher, 44 Ill. 295	46
Chicago v. Johnson, 53 Ill. 91	14
Chicago v. Laflin, 49 Ill. 172	154
Chicago v. Larned, 34 Ill. 203	154
Chicago, Kelly v. 48 Ill. 388	3
Chicago v. McGinn, 51 Ill. 266	14, 40, 160
Chicago, Rees v. 38 Ill. 322	153, 154
City of Alton, Godfrey v. 12 Ill. 30	153
City of Alton v. Ill. Trans. Co., 12 Ill. 38	154
City of Alton, Sawyer v. 3 Scam. 127	51
City of Aurora, Dunning v. 40 Ill. 481	38
City of Belleville v. Stookey, 33 Ill. 441	13
City of Bloomington v. Bay, 42 Ill. 503	14
City of Brooklyn, Grant v. 41 Wend. 384	64
City of Galena, Ill. Central R. R. Co. v. 40 Ill. 344	39
City of Joliet v. Verley, 35 Ill. 58	40, 46
City of Lacon v. Page, 48 Ill. 499	46
City of Ottawa, Korah v. 32 Ill. 121	52
City of Peoria, Cole v. 18 Ill. 301	142
City of Peoria v. Johnston, 56 Ill. 45	14, 26
City of Peoria, Nevins v. 41 Ill. 502	15
City of Rockford, Fox v. 38 Ill. 451	51
Claffin v. Wilcox, 18 Vt. 605	65
Clark, Kingston Mut. Ins. Co. v. 33 Barb. 196	71
Claypole v. McAllister, 20 Ill. 504	159, 160
Clifford v. Town of Eagle, 35 Ill. 444	27
Clisbee, Fisher v. 12 Ill. 344	159
Clyde, Town of Galen v. 27 Barb. 543	68
Colden v. Thurber, 2 Johns. 424	66
Cole v. City of Peoria, 18 Ill. 301	142
Commissioners of Highways, Allison v. 54 Ill. 170	34, 109

Commissioners of Highways v. Baumgarten, 41 Ill. 254 . . .	108
Commissioners of Highways v. Durham, 43 Ill. 86	37
Commissioners of Highways, Mack v. 41 Ill. 378	141
Commissioners of Highways v. Supervisors, 53 Ill. 320	133
Commissioners of Highways v. The People, 38 Ill. 348	15, 27
Commissioners of Highways, The People v. 52 Ill. 498	14
Commissioners v. Harper, 38 Ill. 104	15, 108, 109
Commissioners of Hudson, People v. 7 Wend. 474	66
Commissioners of Sonora v. Supervisors of, etc. 27 Ill. 141.	136
Conrad v. Trustees of Ithaca, 16 N. Y. 158	68
Coombs v. Parrington, 42 Me. 332	65
Corley v. Kennedy, 28 Ill. 143	109, 136
Corporation of Albany, People v. 11 Wend. 539	68
County Commissioners, Hutchins v. 1 Gilm. 345	26
County Commissioners, Mills v. 3 Scam. 53	158
County of Salop, Rex v. 13 East 95	13
County of Sangamon v. Brown, 13 Ill. 207	26, 36
Coursen v. Ely, 37 Ill. 388	11
Craig v. The People, 47 Ill. 487	14, 39, 40
Crear v. Crossly, 40 Ill. 175	30, 154, 178
Crosby v. Gibbs, 19 Ill. 310	38
Crossly, Crear v. 40 Ill. 175	30, 154, 178
Crozier, Bartlett v. 17 Johns. 452	66, 68
Daniels v. The People, 21 Ill. 439	26, 154
Dartmouth College v. Woodward, 4 Wheat. 518	168
Davenport v. Lambert, 44 Barb. N. Y. 596	66
Day, McCann v. 57 Ill. 101	178
Dean, Bickerdike v. 21 Ill. 199	38
Dempsey v. Donnelly, 58 Ill. 40	114, 16, 23, 26, 32
Dennis v. Maynard, 15 Ill. 477	25
Dimon v. The People, 17 Ill. 416	15, 26, 153
Donnelly, Dempsey v. 58 Ill. 40	14, 16, 23, 26, 32
Drainage Co. Hessler v. 53 Ill. 105	50, 154
Dudley v. Bolles, 24 Wend. 465	64
Dumoss v. Francis, 15 Ill. 543	26, 38
Dundy v. Chambers, 23 Ill. 369	159
Dunlap v. Trustees etc. of Mt. Sterling, 14 Ill. 251	142
Dunning v. City of Aurora, 40 Ill. 481	38
Durham, Commissioners of Highways v. 43 Ill. 86	37
Dygert v. Schenck, 23 Wend. 446	66
Earing v. Lansing, 7 Wend. 185	64
Eden, Ellis v. 30 Loud. Law Times 601	168
Eighth Av. R. R. Co. Hegan v. 15 N. Y. 380	64

Ellis v. Eden, 30 Lond. Law Times 601.....	168
Ely, Coursen v. 37 Ill. 388	11
English, Beckwith v. 51 Ill. 147	109
Eyman v. The People, 1 Gilm. 4.....	13, 25
Ferris v. Ward, 4 Gilm. 499	26, 36, 38
Figley, Hill v. 23 Ill. 418.....	51
Finney, Center v. 17 Barb. 94	65
Fish v. Mayor of Rochester, 6 Paige 272.....	102
Fisher v. Clisbee, 12 Ill. 344	159
Fowler v. Mott, 19 Barb. 204	13
Fox v. City of Rockford, 38 Ill. 451.....	51
Francis, Dumoss v. 15 Ill. 543.....	26, 38
Fredericks, The People v. 48 Barb. 173.....	90
Fuller v. Fullerton, 14 Barb. 59	71
Fullerton, Fuller v. 14 Barb. 59	71
Gale v. Anderson, 13 Ill. 443	158
Gallagher, Chicago v. 44 Ill. 295.....	46
Garlinghouse v. Jacobs, 29 N. Y. 303	66, 68
Gear v. Bullerdick, 34 Ill. 75.....	158
Gentleman v. Soule, 32 Ill. 271.....	14, 15, 154
Gipps, Crosby v. 19 Ill. 310.....	38
Godfrey v. City of Alton, 12 Ill. 30	153
Gort, Benedict v. 3 Barb. 469	102
Grant v. City of Brooklyn, 41 Wend. 384.....	64
Graves v. Otis, 2 Hill 470	102
Gray v. Waterman, 40 Ill. 523.....	39
Green v. Green, 34 Ill. 320.....	139, 142
Green v. Oakes, 17 Ill. 249	153
Grube v. Nichols, 36 Ill. 92	15, 26
Guptail v. Teft, 16 Ill. 365	35
Harper, Commissioners v. 38 Ill. 104	15, 108, 109
Harper, Marion Co. v. 44 Ill. 482	36
Hart, Brooks v. 14 N. H. 307	64
Harvey, Peoria Co. v. 18 Ill. 364	142
Harward v. St. Clair Drain Co., 51 Ill. 130.....	50, 154
Haven, Canal Trustees v. 11 Ill. 554	13, 152
Hegan v. Eighth Av. R. R. Co., 15 N. Y. 380.....	64
Hessler v. The Drainage Commissioners, 53 Ill. 105.....	50, 154
Hickok v. Trustees of Plattsburgh, 16 N. Y. 161	68
Hicks, Wells v. 27 Ill. 345.....	108, 109, 112, 133
Hill v. Figley, 23 Ill. 418.....	51
Hiner v. The People, 34 Ill. 297	15
Hoes v. Canal Trustees, 14 Ill. 402.....	25

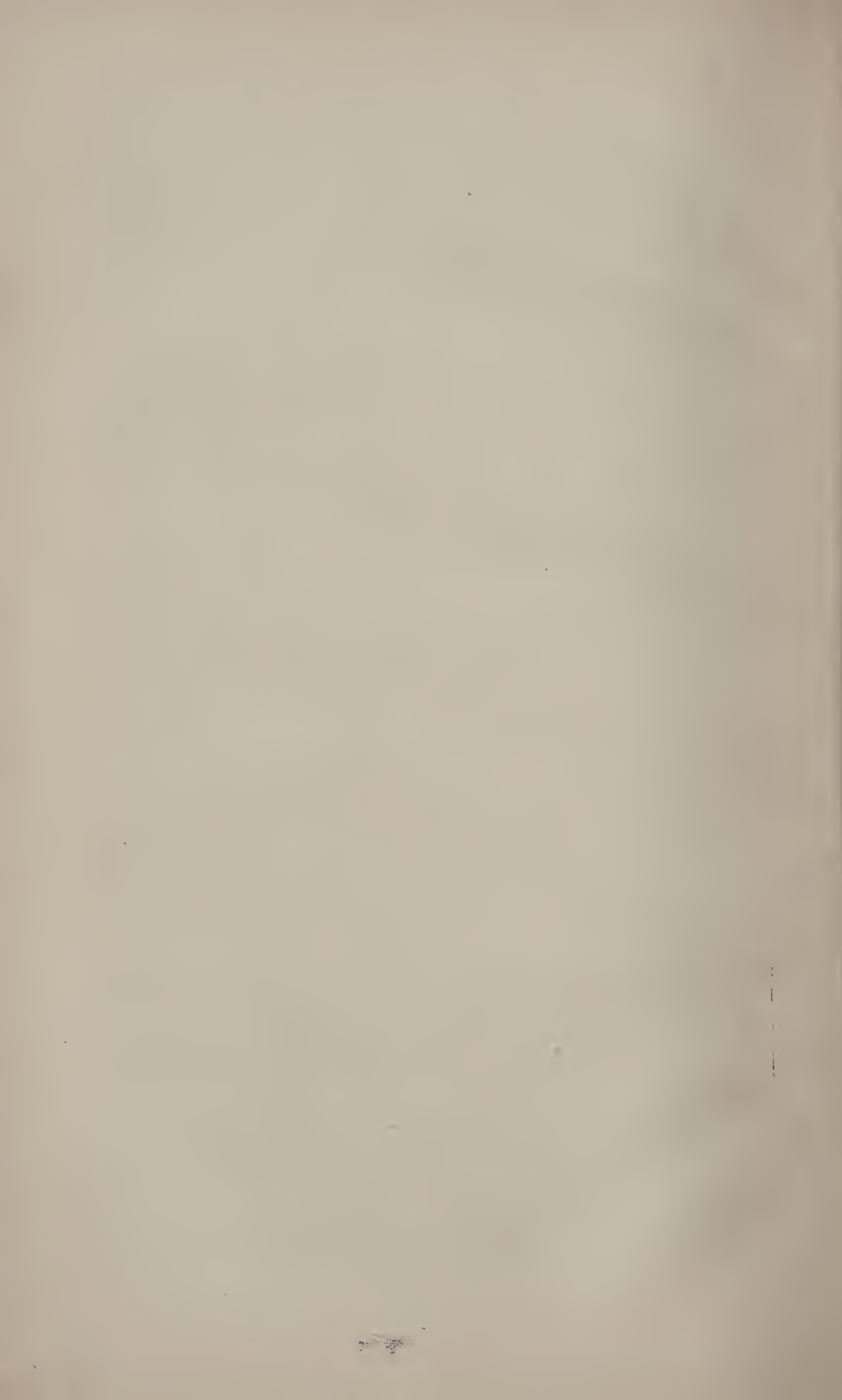
Howard, Nance v. Breese 183	51
Hunsaker v. Wright, 30 Ill. 146	51
Hunter v. Middleton, 13 Ill. 50	13, 39
Hunting, Talmage v. 29 N. Y. 447	66
Hutchins v. Co. Commissioners, 1 Gilm. 345	26
Hyatt v. Trustees of Rondout, 44 Barb. 391	66, 68
Illinois Trans. Co., City of Alton v. 12 Ill. 38	154
Illinois Riv. Packet Co. v. Peoria Bridge Ass., 38 Ill. 467 ..	40
Ireland v. Oswego etc. Plank Road Co., 13 N. Y. 531	66
Jacobs, Garlinghouse v. 29 N. Y. 303	66, 68
Jansen v. Ostrander, 1 Cow. 670	71
Johnson, Chicago v. 53 Ill. 91	14
Johnson v. Joliet etc. R. R. Co., 23 Ill. 202	154
Johnston, City of Peoria v. 56 Ill. 45	14, 26
Judges of Cortland Co., People v. 24 Wend. 491	66
Keech v. The People, 22 Ill. 478	136, 141
Kelly v. Chicago, 48 Ill. 388	3
Kemper, Town of Waltham v. 55 Ill. 346	67
Kennedy, Corley v. 28 Ill. 143	109, 136
Kimball v. Yates, 14 Ill. 464	37
Kingman, The People v. 24 N. Y. 559	102
Kingsbury, McFadden v. 11 Wend. 667	83
Kingston Mut. Ins. Co. v. Clark, 33 Barb. 196	71
Korah v. City of Ottawa, 32 Ill. 121	52
Kost, Town of Pleasant v. 29 Ill. 490	51
Laffin, Chicago v. 49 Ill. 172	154
Lambert, Davenpeck v. 44 Barb. N. Y. 596	66
Lambier, The People v. 5 Denio 9	13
Lansing, Earing v. 7 Wend. 185	64
Larned, Chicago v. 34 Ill. 203	154
Leech v. Waugh, 24 Ill. 229	39, 142
Leech, Waugh v. 28 Ill. 488	153, 154
Lequat v. The People, 11 Ill. 330	27
Loomis, Barker v. 6 Hill 619	66
Louk v. Woods, 15 Ill. 256	30
Lovington v. Wider, 53 Ill. 302	50
Lyon, Rex v. 3 Dow. & R. 497	13
Mack v. Commissioners of Highways, 41 Ill. 378	141
McAllister, Claypole v. 20 Ill. 504	159, 160
McCann v. Day, 57 Ill. 101	178
McDonald v. Madison Co. 43 Ill. 22	52
McFadden v. Kingsbury, 11 Wend. 667	83
McGinn, Chicago v. 51 Ill. 266	14, 40, 160

Madison Co., McDonald v. 43 Ill. 22	52
Marcy v. Taylor, 19 Ill. 634	39, 153, 154
Marcy, Taylor v. 25 Ill. 518	35, 37
Marion Co. v. Harper, 44 Ill. 482	36
Maynard, Dennis v. 15 Ill. 477	25
Mayor of N. Y., Wilson v. 1 Denio 599	68
Mayor of Rochester, Fish v. 6 Paige 272	102
Mayor of Troy, Wendell v. 39 Barb. 329	68
Menard, Betts v. Breese App. 10	158
Middleton, Hunter v. 13 Ill. 50	13, 39
Mills v. Brown, 2 Scam. 549	158
Mills v. County Commissioners, 3 Scam. 53	158
Mills v. County of St. Clair, 2 Gilm. 197	158
Moffatt, Town of Winfield v. 42 Ill. 47	139
Mohawk, etc. v. Artcher, 6 Paige 83	118
Morey v. Newfane, 8 Barb. 645	68
Morgan, Champlin v. 20 Ill. 181	26
Moses v. P., Ft. W. & C. R. R. Co., 21 Ill. 522	15
Mott, Fowler v. 19 Barb. 204	13
Nance v. Howard, Breese 183	51
Nealy v. Brown Co. Commissioners, 1 Gilm. 10	13, 25
Nesbitt v. Trumbo, 39 Ill. 110	30, 154, 178
Nevins v. City of Peoria, 41 Ill. 502	15
Newfane, Morey v. 8 Barb. 645	68
Nichols, Grube v. 36 Ill. 92	15, 26
Norton v. Studley, 17 Ill. 556	37
Oakes, Green v. 17 Ill. 249	153
Ostrander, Jansen v. 1 Cow. 670	71
Oswego etc. Plank Road Co., Ireland v. 13 N. Y. 531	66
Otis, Graves v. 2 Hill 470	102
Page, City of Lacon v. 48 Ill. 499	46
Parrington, Coombs v. 42 Me. 332	65
Pearce v. Town of Gilmer, 54 Ill. 25	27, 38
People, Commissioners of Highways v. 38 Ill. 347	15, 27
People v. Commissioners of Highways, 52 Ill. 498	14
People v. Commissioners of Hudson, 7 Wend. 474	66
People v. Corporation of Albany, 11 Wend. 539	68
People, Craig v. 47 Ill. 487	14, 39, 40
People, Daniels v. 21 Ill. 439	26, 154
People, Dimon v. 17 Ill. 416	15, 26, 153
People, Eymann v. 1 Gilm. 4	13, 25
People v. Fredericks, 48 Barb. 173	90
People, Hiner v. 34 Ill. 297	15

People v. Judges of Courtland Co., 24 Wend. 491	66
People, Keech v. 22 Ill. 478.....	136, 141
People v. Kingman, 24 N. Y. 559	102
People v. Lambier, 5 Denio 9.....	13
People, Lequat v. 11 Ill. 330	27
People v. Smith, 15 Ill. 326.....	136
People v. Supervisors of Niagara, 4 Hill 20	90
People, Sweeney v. 28 Ill. 208.....	38
People v. Taylor, 34 Barb. 481.....	118
People v. Vermilion Co., 47 Ill. 256	109
People v. Williams, 36 N. Y. 441.....	68, 74
People v. Williams, 51 Ill. 63.....	154
Peoria Bridge Ass. Ill. Riv. Packet Co. v. 38 Ill. 467.....	40
Peoria Co. v. Harvey, 18 Ill. 364.....	142
Pitstick, Tower v. 55 Ill. 117.....	67, 111, 112
Plummer v. Sturtevant, 32 Me. 325.....	102
Proctor, Town of Lewiston v. 27 Ill. 414.....	14, 26, 39
Radcliff v. Brooklyn, 4 N. Y. 203	102
Radway v. Briggs, 37 N. Y. 256	13
Railroad Co. v. Black, 58 Ill. 33	170
Railroad Co., Ill. Cen. v. City of Galena, 40 Ill. 344.....	39
Railroad Co., Joliet etc., Johnson v. 23 Ill. 202	154
Railroad Co., N. Y. Cent., Brace v. 27 N. Y. 269.....	13
Railroad Co., P. Ft. W. & C., Moses v. 21 Ill. 522.....	15
Railroad Co., T. P. & W. v. Town of Chenoa, 43 Ill. 209....	39
Reed, Aurora v. 58 Ill. 29.....	151, 152
Rees v. Chicago, 38 Ill. 322	153, 154
Rex v. County of Salop, 13 East. 95.....	13
Rex v. Lyon, 3 Dow. & R. 497.....	13
Robinson v. Chamberlain, 34 N. Y. 380.....	68
St. Clair Drain Co., Harward v. 51 Ill. 130.....	50, 154
St. Clair Co. Mills v. 2 Giln. 197	158
Sawyer v. City of Alton, 3 Scam. 127	51
Schenck, Dygert v. 23 Wend. 446.....	66
Schlader, Trickey v. 52 Ill. 78.....	27
Scripture, Sullivan v. 3 Allen 564	65
Smith v. Smith, 2 Pick. 621.....	65
Smith, The People v. 15 Ill. 326.....	136
Smith v. Wright, 24 Barb. 170.....	68
Soule, Gentleman v. 32 Ill. 271.....	14, 15, 154
Stephani v. Brown, 40 Ill. 428.....	39
Stookèy, City of Belleville v. 33 Ill. 441	13
Studley, Norton v. 17 Ill. 556.....	37

Sturtevant, Plummer v. 32 Me. 325.....	102
Sullivan v. Scripture, 3 Allen 564.....	65
Supervisors of, etc. Commissioners of Sonora v. 27 Ill. 141..	136
Supervisors, Commissioners of Highways v. 53 Ill. 320	133
Supervisors of Niagara, The People v. 4 Hill 20.....	90
Sweeney v. The People, 28 Ill. 208	38
Talmage v. Hunting, 29 N. Y. 447	66
Tanner, Beyer v. 29 Ill. 135.....	35
Tatman, Trustees v. 13 Ill. 27.....	158
Taylor, Marcy v. 19 Ill. 634.....	39, 153, 154
Taylor v. Marcy, 25 Ill. 518.....	35, 37
Taylor, The People v. 34 Barb. 481.....	118
Teft, Guptail v. 16 Ill. 365.....	35
Thurber, Colden v. 2 Johns. 424.....	66
Todemier v. Aspinwall, 43 Ill. 401.....	27
Tower v. Pitstick, 55 Ill. 118.....	67, 111, 112
Town v. Town of Blackberry, 29 Ill. 137.....	34, 112
Town of Blackberry, Town v. 29 Ill. 137.....	34, 112
Town of Chenoa, T. P. & W. R. R. Co. v. 43 Ill. 209.....	39
Town of Eagle, Clifford v. 35 Ill. 444.....	27
Town of Galena v. Clyde, 27 Barb. 543.....	68
Town of Gilmer, Pearce v. 54 Ill. 25.....	27, 38
Town of Jacksonville, Warren v. 15 Ill. 236	153, 154
Town of Lewiston v. Proctor, 27 Ill. 414.....	14, 26, 39
Town of Pleasant v. Kost, 29 Ill. 490.....	51
Town of Steuben, Bussell v. 57 Ill. 35	67
Town of Vinegar Hill v. Busson, 42 Ill. 45	15
Town of Waltham v. Kemper, 55 Ill. 346	67
Town of Winfield v. Moffatt, 42 Ill. 47.....	139
Trickey v. Schlader, 52 Ill. 78.....	27
Trumbo, Nesbitt v. 39 Ill. 110.....	30, 154, 178
Trustees v. Tatman, 13 Ill. 27	158
Trustees of Brockport, West v. 16 N. Y. 161.....	68
Trustees of Ithaca, Conrad v. 16 N. Y. 158.....	68
Trustees etc. of Mt. Sterling, Dunlap v. 14 Ill. 251	142
Trustees of Plattsburgh, Hickok v. 16 N. Y. 161	68
Trustees of Rondout, Hyatt v. 44 Barb. 391.....	66, 68
Verley, City of Joliet v. 35 Ill. 58	40, 46
Vermilion Co. The People v. 47 Ill. 256	109
Walker v. Caywood, 31 N. Y. 51.....	66
Ward, Ferris v. 4 Gilm. 499	26, 36, 38
Warne v. Baker, 24 Ill. 351	141
Warne v. Baker, 35 Ill. 382	104

Warren v. Town of Jacksonville, 15 Ill. 236	153, 154
Waterman, Gray v. 40 Ill. 523	39
Waugh, Leech v. 24 Ill. 229	39, 142
Waugh v. Leech, 28 Ill. 488	153, 154
Wayde v. Carr, 2 Dow. & Ry. 255	8
Wells v. Hicks, 27 Ill. 345	108, 109, 112, 133
Wendell v. Mayor of Troy, 39 Barb. 329	68
West v. Trustees of Brockport, 16 N. Y. 161	68
White Administrator v. County of Bond, 58 Ill.	67
Wider, Lovington v. 53 Ill. 302	50
Wilcox, Claffin v. 18 Vt. 605	65
Williams v. The People, 36 N. Y. 441	68, 74
Williams, The People v. 51 Ill. 63	154
Wilson v. Mayor of N. Y. 1 Denio 599	68
Winkler v. Winkler, 40 Ill. 179	30
Woods, Louk v. 15 Ill. 256	30
Woodward, Dartmouth College v. 4 Wheat. 518	168
Worrall, Burdick v. 4 Barb. 596	64
Wright, Hunsaker v. 30 Ill. 146	51
Wright, Smith v. 24 Barb. 170	68
Yates, Kimball v. 14 Ill. 464	37



THE HIGHWAY SYSTEM.

SECTION I. INTRODUCTION — HIGHWAYS GENERALLY.

- II. ROADS AND BRIDGES IN COUNTIES UNDER PRIMARY ORGANIZATION.
 - III. ROADS AND BRIDGES IN COUNTIES UNDER TOWNSHIP ORGANIZATION.
 - IV. STREETS AND ALLEYS.
 - V. RIVERS AND FERRIES.
 - VI. RAILWAYS AND CANALS.
 - VII. TURNPIKES, TOLL-BRIDGES AND PLANK ROADS.
 - VIII. PRIVATE WAYS.
-

SECTION I.

INTRODUCTION — HIGHWAYS GENERALLY.

- 1. Defined, kinds of ways.
- 2. Their creation.
 - 1. By legislative authority.
 - 2. By dedication, user.
 - 3. By necessity.
- 3. Their nature, easements or servitudes.
- 4. Their establishment, maintenance, repairs.
- 5. Obstructions, nuisances.
- 6. Scope of the subject.

1. A highway is a passage, road or street which every citizen has a right to use.¹ The term *highway* is the generic name for all kinds of public ways, whether they be carriage-ways, bridle-ways, foot-ways, bridges, turnpike roads, railroads, canals, ferries, or navigable rivers.²

2. Highways are created either (1) by legislative authority, (2) by dedication, or (3) by necessity. (1) *By legislative authority.* In England, the laying

¹ 1 Bouvier, Inst. n. 442; 3 Kent, Com. 432; 3 Yeates, Penn. 421.

² 6 Mod. 255; Angell, Highw. c. 1.

out of highways is regulated by act of parliament; in this country, by general statutes, differing in different states. In England, the uniform practice is to provide a compensation to the owner of the land taken for highways. In the act authorizing the taking, in the United States, such a provision must be made, or the act will be void under the clause in the several state constitutions that "private property shall not be taken for public use without just compensation." The amount of such compensation may be determined either by a jury or by commissioners, as shall be prescribed by law.¹ In case the statute make no provision for indemnity for land to be taken, an injunction may be obtained to prevent the taking,² or an action at law may be maintained after the damage has been committed.³ (2) *By dedication.* This consists of two things: first, on the part of the owner of the fee, an appropriation of land to be used by the public, generally, as a common way; second, on the part of the public, an acceptance of the land, so appropriated, for such use. Against the owner, dedication may be proved by his express declaration, whether by deed or by parol, or by any act unequivocally evincing his intention to dedicate, as by his opening a way for the public over his land, or it may be implied from his acquiescence in the use of his land for a public way. Where acquiescence is the only evidence of dedication, it must ordinarily have continued for twenty years; though any shorter period will suffice, if such acquiescence cannot reasonably be accounted for except upon the supposition of an intent to dedicate. In all cases

¹ 1 Blackstone, Com. 139; Angell, Highw. c. 2; 8 Price, Exch. 535; 12 Mass. 466; 18 Pick. Mass. 501; 2 Johns. Ch. N. Y. 162; 12 Barb. N. Y. 227; 25 Wend. N. Y. 462; 21 N. H. 358; 1 Baldw. C. C. 222; 3 Watts, Penn. 292.

² 3 Paige, Ch. N. Y. 45; 2 Johns. Ch. N. Y. 162.

³ 5 Cow. N. Y. 165; 16 Conn. 98.

the intent to dedicate—the *animus dedicandi*—is the indispensable ingredient of the proof against the owner of the fee. The Supreme Court of Illinois has repeatedly said, upon the question of dedication, that in order to justify the holding that title has been divested by dedication, the proof must be clear, either of an actual intent so to do, or of such acts or declarations as will equitably estop the owner from denying such intention.¹ There may be a dedication to the public for a limited purpose, as for a foot-way, horse-way or drift-way, but not to a limited part of the public; and such partial dedication will be merely void.² The proper proof of an acceptance is the use of the way by the public generally,³ but it has been held in some states that an acceptance, to be effectual, must be made by the body chargeable with the duty of repairing.⁴ (3) *By necessity.* If a highway be impassable, from being out of repair or otherwise, the public have a right to pass in another line, and, for this purpose, to go on the adjoining ground; and it makes no difference whether it be sown with grain or not.⁵

3. A highway is simply an easement or servitude, carrying with it, as its incidents, the right to use the soil for the purposes of repair and improvement; and, in cities, for the more general purposes of sewerage, the distribution of light and water, and the furtherance of public morality, health, trade and convenience. The owner of the land over which it passes retains the fee and all rights of property not incompatible

¹ Kelly v. Chicago, 48 Ill. 388; Angell, Highw. c. 3; 3 Kent, Com. 451; 5 Taunt. 125; 30 Eng. L. & Eq. 207; 11 East 375; 11 Mees. & W. Exch. 827; 6 Pet. 431; 19 Pick. Mass. 405; 5 Watts & S. Penn. 141.

² 11 Mees. & W. Exch. 827; 8 Cush. Mass. 195.

³ 5 Barnew. & Ald. 469; 1 R. I. 93.

⁴ 13 Vt. 424; 6 N. Y. 257; 16 Barb. N. Y. 251; 8 Gratt. Va. 632; 2 Ind. 147.

⁵ 1 Ld. Raym. 725; Croke, Car. 366; 1 Rolle, Abr. 390 a; 7 Cush. Mass. 408; Yelv. 142, n. 1.

with the public enjoyment, such as the right to the herbage, the trees and fruit growing thereon, or minerals below, and may work a mine, sink a drain or cellar, or carry water in pipes beneath it.¹ He may maintain ejectment for encroachments thereon, or an assize if disseised of it,² or trespass against one who builds on it,³ or who digs up and removes the soil,⁴ or cuts down trees growing thereon,⁵ or who stops upon it for the purpose of using abusive or insulting language.⁶ If a railroad be laid upon a highway, even though laid by legislative authority, the owner of the fee is entitled to compensation for the additional servitude.⁷ The owners on the opposite sides *prima facie* own respectively to the centre of the highway;⁸ and a grant of land bounded "by," or "on," or "along" a highway carries, by presumption, the fee to the centre, if the grantor own so far; though this presumption may be rebutted by words showing an intention to exclude the highway, such as, "by the side of," "by the margin of," or "by the line of" the highway, or other equivalent expression.⁹ Whenever the highway is abandoned or lost, the owner of the soil recovers his original unincumbered dominion.¹⁰

4. In England, the inhabitants of the several parishes are *prima facie* bound to repair all highways

¹ 4 Viner, Abr. 502; Comyns, Dig. *Chemin* (A 2); Angell, Highw. c. 7; 1 Burr. 133; 1 N. H. 16; 1 Sumn. C. C. 21; 3 Rawle, Penn. 495; 10 Pet. 25; 6 Mass. 454; 15 Johns. N. Y. 447.

² 3 Kent, Com. 432; Adams, Eject. 19; 9 Serg. & R. Penn. 26; 1 Conn. 135; 2 Smith, Lead. Cas. 141.

³ 2 Johns. N. Y. 357.

⁴ 12 Wend. N. Y. 98.

⁵ 1 N. H. 16.

⁶ 11 Barb. N. Y. 390.

⁷ 2 E. D. Smith, N. Y. 97; 3 Hill, N. Y. 567; 4 Zab. N. J. 592; 16 Miss. 649.

⁸ Angell, Highw. § 313.

⁹ 3 Kent, Com. 433; Angell, Highw. § 315; 11 Me. 463; 4 Day, Conn. 228; 13 N. H. 381; 8 Metc. Mass. 266; 2 R. I. 508; 2 Sanf. N. Y. 234; 2 Whart. Penn. 18.

¹⁰ Angell, Highw.; 4 Mass. 429; 6 Pet. 498, 513; 8 Watts, Penn. 172; 15 Johns. N. Y. 447.

lying within them, unless by prescription or otherwise they can throw the burden upon particular persons.¹ In this country, the English parochial system being unknown, this feature of the common law does not prevail. The liability to repair is here determined by statute, and, in most of the states, devolves upon the towns.² The liability being thus created, its measure is likewise to be ascertained by statute, the criterion being, generally, safety and convenience for travel, having reference to the natural characteristics of the road and the public needs.³ For neglect to repair, the parish in England, and in this country the town or body chargeable, is indictable as for a nuisance,⁴ and, in many states, is made liable, by statute, to an action on the case for damages in favor of any person who may have suffered special injury by reason of such neglect.⁵ The duty of repair may, in this country, rest on an individual to the exclusion of the town,⁶ or on a corporation who, in pursuance of their charter, build a road, and levy tolls for the expense of maintaining it.⁷ The taking of toll is *prima facie* evidence of the duty.⁸

5. Any act or obstruction which unnecessarily incommodes or impedes the lawful use of a highway by the public, is a common-law nuisance,⁹ and may be abated by any one whose passage is thereby obstructed;¹⁰ or the person causing or maintaining the same may be

¹ Shelford, Highw. 44; 1 Hawkins, Pl. Cr. 76; 5 Burr. 1700; 12 Mod. 409.

² 8 Barb. N. Y. 645; 13 Pick. Mass. 343; 1 Humphr. Tenn. 217.

³ Angell, Highw. § 259; 2 Woodb. & M. C. C. 337; 19 Vt. 470; 4 Cush. Mass. 307, 365; 14 Me. 198.

⁴ 2 Wms. Saund. 158. n. 4; 3 Term, 265; 28 N. H. 195; Angell, Highw. § 275.

⁵ 17 How. 161; 3 Cush. Mass. 174; 22 Penn. St. 384; 31 Me. 299; Angell, Highw. § 286.

⁶ 23 Wend. N. Y. 446.

⁷ 7 Conn. 86.

⁸ 1 Hawks, N. C. 451.

⁹ 4 Stephen, Com. 294; 1 Hawkins, Pl. Cr. c. 76; Angell, Highw. § 345.

¹⁰ Angell, Highw. § 274; 3 Stephen, Com. 5; 5 Coke 101.

indicted,¹ or may be sued for damages in an action on the case by any one specially injured thereby.²

It is the duty of travelers upon highways, for the purpose of avoiding collision and accident, to observe due care in accommodating themselves to each other. To subserve this purpose, it is the rule in England that, in meeting, each party shall bear or keep to the left; and in this country the reverse—that is, to the right.³ This rule, however, may and ought to be varied, where its observance would defeat its purpose.⁴ The rule does not apply to equestrians and foot-passengers.⁵ It is another rule that travelers shall drive only at a moderate rate of speed, furious driving on a thronged thoroughfare being an indictable offense at common law.⁶ In case of injury by reason of the non-observance of these rules or of other negligence, as by the use of unsuitable carriages or harness, or horses imperfectly trained, the injured party is entitled to recover his damages in an action on the case against the culpable party, unless the injury be in part attributable to his own neglect.⁷

6. The location, establishment, alteration, maintenance and use of highways, so as to familiarize the public officer and elector with forms and procedure in such matters, is the scope of the subject immediately before us. Legislation, judicial decision, and custom and practice in Illinois, have established a

¹ 1 Hawkins, Pl. Cr. c. 76; 2 Saund. 158, 159, note; 7 Hill, N. Y. 575; 13 Metc. Mass. 115.

² Coke, Litt. 56 a; 2 Bingham. 263; 1 Binm. Penn. 463; 7 Cow. N. Y. 609; 19 Pick. Mass. 147; Angell, Highw. § 235 *et seq.*

³ 2 Stephen, Nisi P. 984; Story, Bailm. § 599; 2 Dowl. & R. 255.

⁴ 8 Carr. & P. 103; 12 Metc. Mass. 415; 23 Penn. St. 196.

⁵ 24 Wend. N. Y. 465; 2 D. Chipm. Vt. 128; 8 Carr. & P. 373, 691.

⁶ 1 Pet. 590; 13 *id.* 181; 8 Carr. & P. 694.

⁷ Angell, Highw. § 345 *et seq.*; 2 Taunt. 314; 1 Pick. Mass. 345; 11 East 60; 15 Conn. 359; 5 Watts & S. Penn. 544; 5 Carr. & P. 379; 6 Cow. N. Y. 191; 19 Wend. N. Y. 399.

SYSTEM essentially the same throughout the state as a whole, but differing materially in details relative to roads and bridges. From the first settlement of the territory to 1849, with the primary organization of the county came and have been developed the laws which pertain to roads and bridges in the state, now known as the ACT OF APRIL 18, 1873,¹ substantially a revision of chapter 93 of the Revised Statutes of 1845. In 1849, with the township system of county government, came the machinery relative to highways which had been devised in the state of New York. We not only adopted the statutes of that state, but, according to a familiar rule, their interpretation. Therefore, in counties still under the primary organization, the laws of 1845 and our own reports, with the common law, furnish the rules of action, while in counties under township organization we have to look also at the legislation and judicial decisions in New York, applicable to such a system. Hence, in the first place, we shall consider our own laws and reports, and then the laws and reports of the Empire State, in so far as they relate to roads and bridges as we find them substantially embodied in the ACT OF APRIL 11, 1873.²

SECTION II.

ROADS AND BRIDGES IN COUNTIES UNDER PRIMARY ORGANIZATION.

- I. THE ROAD, COMMON CARRIERS, ETC.
- II. HIGHWAYS, NEW ROADS, LOCATION AND RELOCATION.
- III. THE COUNTY COURT, OR THE BOARD OF COUNTY COMMISSIONERS (Art. 10, § 6, Const. 1870)—JURISDICTION; SUPERVISORS (OF ROADS).
- IV. SUITS FOR ROAD LABOR AND ROAD TAXES.
- V. MISCELLANEOUS PROVISIONS.
- VI. THE BOARD OF COUNTY COMMISSIONERS INVESTED WITH COUNTY COURT JURISDICTION IN SUCH MATTERS; REPEAL, ETC.

¹ An act in regard to gateways, roads and bridges in counties not under township organization. Laws 1873, MYERS' Ed. p. 59.

² An act in regard to roads and bridges in counties under township organization, approved and in force April 18, 1873. Laws 1873, MYERS' Ed. p. 30.

I. THE ROAD, COMMON CARRIERS, ETC.

1. Turn to the right, if practicable.
2. Intemperate or drunken drivers not to be employed.
3. Driver guilty of becoming intoxicated on duty, to be discharged; passenger may, by complaint verified by oath to the proprietor, cause the discharge.
4. Running horses or carriage on any occasion prohibited; a misdemeanor; penalty prescribed.
5. Horses to be securely hitched with a sufficient rope or halter.
6. Carriers liable for injuries in damages.
7. "Carriage" defined — any vehicle used for the transportation of either passengers or goods.
8. This act not to affect hackney coaches in cities, nor ordinances relating to them.

1. Whenever any persons, traveling with any carriages shall meet on any turnpike, road or public highway in this state, the persons so meeting shall seasonably turn their carriages to the right of the center of the road so as to permit each carriage to pass without interfering or interrupting, under the penalty of five dollars for every neglect or offense, to be recovered by the party injured: *Provided*, this section shall not be construed to apply to any case, unless some injury to persons or property shall occur by the driver of the carriage or wagon refusing to turn to the right of the beaten track; nor shall it be construed to extend to a case where it is impracticable, from the nature of the ground, for the driver of the carriage or wagon to turn to the right of the beaten track.¹

¹ § 1. An act in regard to gateways, roads and bridges, in counties not under township organization, approved April 18, 1873. § 1, R. S. 1845, p. 480; *Wayde v. Carr*, 2 Dow & Ry. 255; Angell, Highways, § 328-340; Angell, Carriers, § 549; see J. & C., Fines.

The curious observer of the growth and development of a new state, from the native wilds of the untutored savage to the homes of teeming millions of a dominant people, would find in the special and general legislation of the General Assembly of Illinois relative to "roads," abundant food for contemplation and inquiry. Commencing with the organization of the state, going back only fifty-four years, we come to the act of March 29, 1819, for repairing, improving and regulating roads, from which we may trace the general laws until they are codified and form chapter 93 of the R. S. 1845. The act of April 18, 1873, in many particulars, is almost a literal transcript from this chapter.

But by far the greater number of acts from 1819-1870 have been what are

2. No person owning any carriage running or traveling upon any road in this state, for the conveyance of passengers, shall employ, or continue in employment, any person to drive such carriage, who is addicted to drunkenness, or the excessive use of spirituous liquors; and if any such owner shall violate the provisions of this section after he shall have had notice and reasonable proof that such driver is addicted to drunkenness, he shall forfeit at the rate of five dollars per day for all the time during which he shall thereafter have kept any such driver in his employment, to be sued for by any person, and collected in any court having competent jurisdiction; and the court may allow a portion of said penalty, not exceeding twenty-five dollars, to be retained by such complainant, as a compensation for his services and expenses; the balance to be paid into the county treasury.¹

3. If any driver, while actually employed in driving any such carriage, shall be guilty of intoxication, to such a degree as to endanger the safety of the passengers in the carriage, it shall be the duty of the owner of such carriage, on receiving written notice of the fact, signed by any one of said passengers, and certified by him on oath, forthwith to discharge such driver from his employment; and every such owner who shall retain, or have in his employ, within thirty days after the

termed local acts. Every session of the General Assembly seems to have vied with every preceding session for excelling in the number of road laws for particular localities—see preface R. S. 1845. But the constitution of 1870 (§ 20, art. 4), inhibits the General Assembly from passing local or special laws *inter alia*, for “laying out, opening, altering and working roads or highways; vacating roads, town plats, streets, alleys and public grounds.” The acts of 1873, contained in this volume, repeal all former conflicting acts, giving a clear, plain and concise law of highways for either the PRIMARY or the TOWNSHIP system of county government. These acts interfere with no local act, nor established road which has been used within five years.

§ 9, act Apl. 18, 1873.

¹ § 2, *id.* See § 2 R. S. 1845, p. 480. See J. & C., *qui tam* actions

receipt of such notice, any driver who shall have been so intoxicated, shall forfeit at the rate of five dollars per day for the time during which he shall keep any such driver in his employment after receiving such notice, to be sued for and applied as directed in section two (2) of this act.¹

4. No person driving any carriage upon any turnpike, road or public highway within this state, with or without passengers therein, shall run his horses or carriage, or permit the same to run, upon any occasion, or for any purpose whatever, except in case of necessity; and every person who shall offend against the provisions of this section, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined not exceeding one hundred dollars, or imprisoned not exceeding sixty days, at the discretion of the court.²

5. It shall not be lawful for the driver of any carriage, used for the purpose of conveying passengers for hire, to leave the horses attached thereto, while passengers remain therein, without making such horses fast with a sufficient halter, rope or chain, or by placing the lines in the hands of some other person, so as to prevent their running; and if any such driver shall offend against the provisions of this section, he shall forfeit the sum of twenty dollars, to be recovered by action, to be commenced within six months; and unless the amount of such recovery be paid forthwith, execution shall be immediately issued therefor.³

6. The owners of every carriage running upon any turnpike, road or public highway for the conveyance of passengers, shall be liable, jointly or severally, to the party injured, in all cases, for all injuries or damages

¹ § 3, act April 18. 1873. See J. & C., Fines.

² § 4, *id.* See J. & C., Crim. Juris.

³ § 5, *id.* See J. & C., Fines.

done by any person in the employment of such owners as a driver, while driving such carriage, to any person or to the property of any person, and that, whenever the act occasioning such injury, or damage, be willful, negligent or otherwise, in the same manner as such driver would be liable. Any driver of any mail stage coach, or any other vehicle for the conveyance of passengers, willfully offending against the provisions of this act, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined not exceeding three hundred dollars, or imprisoned not exceeding four months.¹

7. The term "carriage," as used in this act, shall be construed to include stage coaches, wagons, carts, sleighs, sleds and every other carriage or vehicle used for the transportation of passengers or goods, or either of them.²

8. Nothing contained in this act shall interfere with or affect any law concerning hackney coaches or carriages in any of the cities of this state, nor interfere with nor affect the laws or ordinances of any such city, for the licensing or regulating such coaches or carriages. Justices of the peace shall have jurisdiction in all cases arising under this act, where the penalty does not exceed two hundred dollars.³

II. HIGHWAYS, ROADS, NEW ROADS, LOCATION AND RELOCATION.

9. ROADS laid out pursuant to law, not vacated and if used within five years, declared HIGHWAYS.

10. Petition of at least thirty-five voters (except in counties of less than

¹ § 6, act April 18, 1873.

COLLISION. — In an action brought by the owner of one vehicle against the owner of another, for damages resulting from a collision, if the defendant has been guilty of negligence and the plaintiff has shown all the care and skill which can be expected from men of ordinary prudence in like circumstances, he is entitled to recover.

Coursen v. Ely, 37 Ill. 388.

² § 7, act of April 18, 1873. See *J. & C., Fines*.

³ § 8, *id.*

three hundred voters, when fifteen shall be enough,) to the county court necessary to inaugurate the opening of a new road; applicants to deposit money to pay for viewing, to be refunded if the road be recommended by viewers.

11. The county court to inquire as to the getting up of the petition, concerning the signers and their interest in the road, and if notice of the application has been given.

12. The court to pass on the merits of the application, and if of the opinion that the public good and convenience require it, shall appoint three disinterested viewers, who, if they also be of the same opinion, shall proceed to locate the road—procedure prescribed—and make the report, if they deem the road unnecessary.

14. Proceeding to vacate a useless or burdensome road prescribed; the petition, the notice, deposit for costs, etc.

15. Opening a new road, how it shall be accomplished.

16. Cart road, how to be obtained for private use.

17. Petition for change, relocation, and proceeding prior and subsequent to the same.

18. Roads on county lines; joint proceedings prescribed for laying out a new road or changing location, or vacating a road on such lines.

19. Remonstrances may be presented and considered, with the authorized applications for or concerning roads, to the county court.

20. Surveys of roads to be made, plats returned, with the report of the viewers, and a record made.

21. The viewers to be sworn; their duties generally.

22. County surveyors may act without further qualification, and administer oaths to associates.

23. Persons and corporations over whose lands roads pass, may object if they cannot agree with the county authorities as to damages, whereupon the county court is to call a jury of six freeholders to view and assess; appeal may be taken to the circuit court, whose decision is to be final; procedure prescribed.

24. Obstructing highways or private road, injuring guide boards, mile-stones, etc.; penalties prescribed.

25. Complaint or information of any such offense cognizable by any justice of the peace of the county.

26. Flooding highways or private roads prohibited; penalties.

27. Driving, riding, etc., on or across a bridge faster than a walk, an offense; penalty for each offense, five dollars; procedure, indictment on complaint or information.

9. All roads within this state, which have been laid out in pursuance of any law of this state, or of the late territory of Illinois, and which have not been vacated in pursuance of law, are hereby declared to be public highways: *Provided*, that all roads that have not been used within five years shall be deemed vacated.¹

¹ § 9, act of April 18, 1873.

A highway is a right of passage for the public in general, without distinction. The term "highway," at common law, extends to all public ways, and

10. No new road shall be opened by order of the county court, unless the same shall be applied for by at least thirty-five voters residing within five miles of the road proposed to be laid out or altered, except in counties which shall not have more than three hundred

includes carriageways, horseways, footways, streets, turnpike and plank roads, railroads, ferries, canals and navigable rivers. They are distinguished from each other only by the mode of their use, the material of which they are composed, or by the manner in which the costs of construction and maintenance are defrayed. Public piers or landing places are highways. *Radway v. Briggs*, 37 N. Y. 256; *People v. Lambier*, 5 Denio 9; *Fowler v. Mott*, 19 Barb. 204. So are public squares, parks, etc. In the statute the word "road" is made synonymous with "highway."

Brace v. N. Y. Central R. R. Co., 27 N. Y. 269.

The size of the way is immaterial; a public footway or bridleway is a highway for foot passengers or horse passengers.

Rex v. County of Salop, 13 East 95.

And a public carriageway is not restrained, because all carriages cannot pass and repass.

Rex v. Lyon, 3 Dow & R. 497.

Railways heretofore constructed or that may hereafter be constructed in this state are hereby declared public highways, and shall be free to all persons for the transportation of their persons and property thereon, under such regulations as may be prescribed by law. And the General Assembly shall, from time to time, pass laws establishing reasonable maximum rates of charges for the transportation of passengers and freight on the different railroads in this state.

Const. 1870, § 12, Art. 11.

If a road be used and traveled by the public as a highway, and be recognized and kept in repair as such by the county authorities, proof of these facts furnishes a legal presumption liable to be rebutted, that it is a public highway.

Eyman v. The People, 1 Gilm. 4; *Nealy v. Brown*, *id.* 10.

PROOF OF. — It is not necessary to produce record evidence of a road.—*Id.*

PAROL EVIDENCE is admissible to show where a road is located. — *Id.*

THE RECORDING OF THE PLAT OF A TOWN PASSES THE FEE in the streets to the corporation. If the town has not a corporate existence the fee remains in abeyance, subject to vest in the corporation the moment it is created.

Canal Trustees v. Haven, 11 Ill. 554. *Hunter v. Middleton*, 13 Ill. 50.

HOW ESTABLISHED. — A highway may be established and proved by prescription, by dedication and by laying out the same as directed by statute.

Alvord v. Ashley, 17 Ill. 363.

CITIES AND TOWNS MAY ACQUIRE THE TITLE to streets and alleys by conveyance, by dedication, by prescription and by platting and recording the town plat. But the ground for streets should be properly indicated on the town plats, and other requisitions of the statute should be complied with, to enable the city or town, and others, to enforce the opening of such streets and alleys.

City of Belleville v. Stookey, 33 Ill. 441.

BY PRESCRIPTION. — A continuous and uninterrupted use of a highway by the public for more than twenty years creates a prescriptive right to the use

voters, when only fifteen shall be required. Such applicants shall deposit in the hands of the clerk of the county court a sufficient sum of money to pay the

of the road. And this right continues until it is clearly and unmistakably abandoned.

The City of Peoria *v.* Johnston, 56 Ill. 45.

Town of Lewiston *v.* Proctor, 27 Ill. 414.

The fact that a village road has not been repaired by the corporate authorities, may be evidence tending to show that the corporation does not regard it as a highway. This will not be the case, however, if it appear that from the nature of the ground the road has needed no repairs.

Town of Lewiston *v.* Proctor, 27 Ill. 414.

SIDEWALKS ARE A PART OF THE STREET, and the city is liable for injuries occasioned by defects therein.

City of Bloomington *v.* Bay., 42 Ill. 503.

PLANK ROADS, though different in construction and in the taking of tolls, are public highways, *sub modo*.

Craig *v.* The People, 47 Ill. 487.

And as to what is such an abandonment of a plank road by a company as to render it a common highway.

Craig *v.* The People, 47 Ill. 487.

BRIDGES ARE BUT STREETS, or highways over water. The fee of such portion of the river as is measured by the width of the street of which the bridge forms a part, is in the corporation. This being so, it is competent for the corporation to devote such portion of the river to any use which, in the judgment of its authorities, shall be deemed most promotive of the public interests, subject only to the easement of navigation.

City of Chicago *v.* McGinn, 51 Ill. 266.

UPON THE QUESTION OF LIABILITY for negligence, it is immaterial whether a city has the fee in its public streets or only a possessory title.

City of Chicago *v.* Johnson, 53 Ill. 91.

A NEIGHBORHOOD LANE for the accommodation of a few persons, but upon which any could travel who might desire, having been in use twenty years, but not having been worked or noticed by the public authorities, cannot be forced upon a town as a public highway.

The People *v.* Comm'rs of Highways, 52 Ill. 498.

Travel may slightly deviate from the thread of a road which is being used, to avoid an obstruction, and still not change the road itself. But it is otherwise where the whole length of the road is abandoned for eight or nine years, and is not sufficiently traveled to prevent its becoming obstructed by the growth of weeds and brush. In such case there is not that continued user which is absolutely necessary to establish a prescriptive right.

Gentleman *v.* Soule, 32 Ill. 271.

Twenty years is the shortest time within which the public can acquire a prescriptive right to use a road.

Gentleman *v.* Soule, 32 Ill. 271.

Nor can the time during which various and distinct lines of travel have been used be so united as to make up the requisite time to establish a prescriptive right to any given single line of road.

Gentleman *v.* Soule, 32 Ill. 271.

In this case it was held that the mere survey and platting of a road by a

viewing. If the report of the persons appointed to view such road be in favor of establishing the road, the money so deposited shall be returned to the persons who deposited the same; but if the report be unfavorable, the expense of the view shall be paid out of the money so deposited.¹

county surveyor, under the direction of highway commissioners, did not have the effect to establish it as a public highway, it having been designed only to ascertain the courses and distances of a road claimed to be already established, and leaving the proof of its existence precisely as it was before. Such proceeding had, however, the effect to estop the public from claiming that the road ran upon a different line from the survey.

Gentleman v. Soule, 32 Ill. 271.

THE SURVEY AND PLAT OF A PUBLIC ROAD is evidence of its location, but is not conclusive; but like the field notes of the government surveys, parol evidence may be received to show that the road was actually located differently from the calls in the survey of the road.

Hiner v. The People, 34 Ill. 297.

HOW ACQUIRED BY THE PUBLIC. — A public highway may be acquired by condemnation under the statute, by grant from the owner; and after twenty years' user by the public a grant will be presumed, and by dedication to and acceptance by the public, which may be inferred from travel by the public, and repairs by the proper public authorities.

Grube v. Nichols, 36 Ill. 92.

For instructions in regard to acquiring a highway, held to be erroneous.

Comm'rs v. Harper, 38 Ill. 104.

FOR INSTRUCTIONS held sufficient.

Town of Vinegar Hill v. Busson, 42 Ill. 45.

WHERE THE FIVE YEARS within which a public road is required by statute to be opened after it is laid out expires, pending litigation in respect to the establishing of the road, the time consumed in the litigation must not be estimated as a part of the five years.

Comm'rs of Highways v. The People, 38 Ill. 347.

The actual use and repairing of a highway is evidence of its acceptance for such purpose.

Alvord v. Ashley, 17 Ill. 363. *Dimon v. The People*, 17 Ill. 416.

Steam as a motive power may be used along the streets of a city, by proper permission.

Moses v. P. Ft. W. and C. R. R. Co., 21 Ill. 522.

GRADING AND DRAINAGE OF STREETS. — For what injuries to adjacent lots arising therefrom the city is liable.

Nevins v. City of Peoria, 41 Ill. 502.

FOR PROPERTY PARTIALLY TAKEN for the use or convenience of a street, there must be due compensation given.

Nevins v. City of Peoria, 41 Ill. 502.

PRIVATE RIGHTS ARE NEVER to be sacrificed to public convenience or necessity without full compensation.

Nevins v. Peoria, 41 Ill. 502.

¹ § 10, act April 18, 1873. R. S. 1845, c. 93, § 17, p. 483; see § 22, *infra*.

11. It shall be the duty of the county court, upon the presentation of the petition for the location or re-location of a road, to inquire into the manner in which the same was gotten up, if signed by individuals through whose lands the same may pass, as far as practicable, and require proof, and be satisfied that the notices required by law of such intended application have been given, in view that the owners of lands which may be damaged shall have notice thereof.¹

12. When a new road shall be applied for, as aforesaid, the county court shall, if in their opinion the public good and convenience require it, appoint three disinterested persons to view the ground proposed for the same; and if, after such view, the viewers shall believe the road applied for to be necessary, taking into consideration the expense of constructing the same, and its utility to the public, they shall proceed to locate and establish the same, on the nearest and most eligible route, from point to point given, having due regard to private property, causing the same to be surveyed, designating its course through prairies and improved land by fixing stakes in the ground, and through the timbered land by marking trees, and shall make report thereof to the next county court; but after the view, if they deem such road unnecessary or improper to be made, they shall report their opinion to that effect to the next term of said court.²

PETITION FOR NEW ROAD.

All applications under this act after the election in 1873, and the qualification and organization of THE BOARD OF COUNTY COM-

¹ § 11, act April 18, 1873.

² § 12, *id.*; § 18 c. 93, R. S. 483.

Under the act of 1835, entitled "An act concerning public roads," an order of the county commissioners' court was necessary, to lay out a new road.

Dempsey v. Donnelly, 58 Ill. 40.

Without an order the proceedings are absolutely void.—*Id.*

MISSIONERS, should be addressed "To the Board of County Commissioners, ——— County."

State of Illinois, }
 ——— County. } Road District ———

To the (County Court or) Board of County Commissioners of said County:

The undersigned, qualified voters, residing within five miles of the route hereinafter mentioned and described for a road, do hereby petition you to cause to be laid out and opened a new road, of the width of four rods, as follows: Commencing at the

in said road district, and running from thence in a direction on the most eligible route to

The following are the names of the owners of lands over which the same is to pass:

B A, C A, L M, etc. (and unknown owners.*)

And your petitioners pray that the said road be laid out and opened according to law, substantially as described.

Dated at this day of 18 .

Names.—A B, etc.

At least thirty-five voters must sign this who reside within five miles of the road proposed.

[Upon which is the usual indorsement.]

Petition for New Road.

To lay out road from

Filed in the office of the County Clerk the day of 18 , and received of the petitioners the sum of \$——, to pay the expenses of viewing.

—— ———, *County Clerk.*

The Notice.

Notice is hereby given, that the following is a true copy of a petition which will be presented to the (County Court or) Board of County Commissioners of County, after the expiration of twenty† days from this date, and on the day of 18 , at the Court House in said County, at the next (term or) session of said (Court or) Board.

Dated this day of 18 .

Here must follow a true and correct copy of the petition and of all the signatures thereto.

* When the owners of any of the lands over which the road is to pass are unknown, this fact should be so stated in the petition.

† See proviso of § 14, act April 18, 1873.

Instead of a copy of the petition, a notice may be given, as follows:

Highway Notice.

Notice is hereby given, that a petition will be presented to the (County Court or) Board of County Commissioners of County, in the State of Illinois, after the expiration of twenty days from this date, on the day of 18 , at the Court House in said County, and at the next (term of said Court or) session of said Board, which petition is signed by thirty-five legal voters in the said County, praying for the establishment of a new road upon the following described route, to wit:

All said petitioners residing within five miles of said route, and all persons interested, are hereby notified to be present at said (term or) session of said (Court or) Board, when and where all can be heard.

Dated at this day of 18 .

_____ } *Petitioners.*

[Upon which is the usual indorsement.]

Notice for New Road.

To lay out road from

Filed in the office of the County Clerk the day or 18 , and received of the petitioners the sum of \$—, to pay the expenses of viewing.

_____, *County Clerk.*

Affidavit of Posting (to be Indorsed.)

State of Illinois, }
—— County. } ss.

A B, being duly sworn, doth depose and say, that he did, on the day of A. D. 18 , post up copies of the within notice, as follows, viz.:

One copy on the door of the Court House in said county.

One copy on the door of the County Clerk's office in said county.

One copy at , in Road District No. 1.

One copy at , in Road District No. 2, etc., in said county, they respectively being the most public places in the several road districts through which the said proposed road is to pass.

A. B.

Subscribed and sworn to before me, this day of A. D. 18 .

N. P., J. P., or ——— Clerk.

At the next (term of the Court or) session of the Board, if a hearing can be had, or if there be no opposition, and the (Court or) Board favor the application, the decision may be entered by

Order.

In the matter of the application of A B and others }
for a new road. }

In view of the foregoing petition and affidavit, and the sum of \$—— having been deposited with the County Clerk, sufficient to pay for the viewing, and having heard the reasons for and against the application, Ordered, that L M, the Surveyor of this County, and X Y, and Z Y, three disinterested persons, be and hereby are appointed to view the ground proposed for the new road described in the petition of A B and others, of date " A. D. 18 , now on file with said Clerk.

A certified copy of this order and of the petition should be immediately delivered to the viewers, or some one of them, who should at once give due notice, meet and act, and, having acted, report at the next session of the (Court or) Board.

In case the granting of the petition be recommended, there must be, besides the report of the viewers, after proper proceedings, a formal order of THE (Court or) BOARD OF COUNTY COMMISSIONERS laying out the road. The report of the Surveyor, and the releases or agreements, or verdicts, if any, in respect to damages, must be filed in the County Clerk's office, before the making of such order, so that the (Court or) Board may know the expenses involved in the whole matter of laying out and opening the road as proposed and located.

13. Viewers, in locating a road, shall ascertain, as far as practicable, where damages will be claimed, and report the names of the individuals claiming to the county court at the time of making their report. It shall be incumbent on such owners of property, by themselves or agents, to inform the court, at the term at which the road viewers shall report, their claims for damages; and no damages shall be allowed, unless claim be made to the court as aforesaid, or to the supervisor, commissioner or superintendent, appointed to open the road, as provided by law. After a road shall be opened, and

no claim for damages being set up, the state or county shall not be liable for any damages whatever.¹

Agreement for Damages in Laying Out or Altering Road.

Whereas, a road was laid out on the day of
A. D. 18 , by L M, the County Surveyor of County, and
State of Illinois, and X Y, and Z Y, Viewers appointed by the
(County Court or) Board of County Commissioners of the County
of , and State aforesaid, on the application of the requisite
number of voters, residing within five miles of said road, as fol-
lows: Commencing
which road passes through the land of
being known and described as follows, viz.:

Now, therefore, it is hereby agreed between the said County
of , and the said that the damages
sustained by the said by reason of
the laying out and opening said road upon his land, hereinbefore
described, be liquidated and agreed upon at dollars.

In witness whereof, the said County, by its duly authorized
agent in this behalf, and the said
have executed this agreement in writing, this day of
A. D. 18 .

[Indorsement.]

Agreement for Damages in Laying Out or Altering Road.

Of damages agreed, \$

Dated 18 .

Filed this day of 18 , in the County Clerk's office of the
County of

— — —, County Clerk.

Release of Damages.

Whereas, a road was laid out on the day of
A. D. 18 , by L M, the County Surveyor of County, and
State of Illinois, and X Y, and Z Y, Viewers appointed by the
(County Court or) Board of County Commissioners of the County
of , and State aforesaid, on the application of the requisite
number of voters, residing within five miles of said road, as fol-
lows: Commencing
which road passes through the land of
being known and described as follows, viz.:

¹ § 13, act April 18, 1873.

Now, therefore, know all men by these presents, that I,
for value received, do hereby release all claims to
damages sustained by me, by reason of laying out and opening
said road through my lands above described.

In witness whereof, I have hereunto set my hand and seal, this
day of A. D. 18 .

Executed and delivered in presence of

[SEAL.]

[Indorsement.]
Release of Damages.

Of

Dated 18 .

Filed in the County Clerk's office of the County of _____ the
day of _____ 18 _____.
_____, County Clerk.

Viewers' Report.

*To the Hon. the (County Court or) Board of County Commissioners of ———
County, and State of Illinois:*

The undersigned, having been appointed by you to view the proposed route for a road beginning at _____, and after viewing the ground proposed for the same, and believing said road to be necessary, taking into consideration the expense of constructing the same and its utility to the public, we did proceed to locate and establish the same on the nearest and most eligible route from point to point given, having due regard to private property, causing the same to be surveyed, designating its course through prairies and improved land by fixing stakes in the ground, and through timbered lands by marking trees, would report that the following is a correct survey thereof as made by us under said appointment, and that below is a correct plat of said road, according to said survey. And annexed hereto are agreements for damages and releases, executed by the owners of the lands over which the route of the said road passes, as surveyed, and the several supervisors of the road districts respectively in which such road is located.

Dated at this day of 18 .

X Y,
Z Y, and
L M,

County Surveyor of County, } Viewers.

Township No. Range No. of Principal Meridian.

6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

[Indorsement.]

Viewers' Report.

Survey of road beginning at

Filed this day of A. D. 18 , in the office of the
County Clerk of the County of _____, *County Clerk.*

Unfavorable Report of the Viewers.

*To the Hon. the (County Court or) Board of County Commissioners of _____
County, and State of Illinois :*

The undersigned, having been appointed by you to view the proposed route for a road beginning at , and after viewing the ground proposed for the same, would respectfully report that we are of the opinion that such road is unnecessary (or improper).

Dated at this day of 18 .

L M, *County Surveyor,* }
X Y, } *Viewers.*
Z Y, }

[Indorsement.]

Viewers' Report.

Survey of road beginning at

Filed this day of A. D. 18 , in the office of the
County Clerk of the County of

— — — — —, *County Clerk.*

*Order Laying Out a Highway (where Damages are Released or
Agreed upon.)*

State of Illinois, } In the (County Court or) office of the
— County. } Board of County Commissioners of said County.

Whereas, on the day of 18 , a petition, in
writing, of

was filed with the County Clerk of said County, and after due
notice presented at a regular (term or) session of said (Court or)
Board, praying for the laying out and opening of a new road as
therein and hereinafter described, said petitioners being voters
residing within five miles of the route of the said new road ; and
it appearing from legal evidence that a copy of said petition, or a
notice of the presentation thereof according to law, had been
posted up, as is more particularly set forth in the affidavit of J K,
on file in said Clerk's office, not less than twenty days before the
same was presented ; and whereas, said (Court or) Board did on the
day of 18 , appoint L M, the Surveyor of said County,
and X Y and Z Y, to view the ground proposed, and they having
viewed the ground in said petition described, and after such view
they believe said road applied for to be necessary, as set forth in
their report on file in the office of the County Clerk of said County,
and having caused a survey and plat of said road to be made on
the day of 18 , by

a competent Surveyor, which plat and survey have been duly
reported, and filed, herein and hereby are made a part of this
order ; and having ascertained the aggregate amount of damages
to which the owner of the land over which said road was to pass
entitled, and said damages having been definitely fixed
by*

It is, therefore, hereby Ordered† that the said road be and is
hereby located, determined and established as follows, to wit :
Beginning
as shown by the plat annexed to said report, and that the same

* State in this space the facts as to release of or agreement or verdicts for
damages.

† Without the order of the Board of County Commissioners, confirming the
viewers' report and locating the road, the proceedings would be void.
Dempsey v. Donnelly, 58 Ill. 40.

be and hereby is ordained and declared to be henceforth a public highway of _____ feet wide, the line of said survey being the centre of said road.

This is entered of record by the County Clerk, and, together with all the papers and entries, makes the record of the laying out of a new road.

The damages having been released or agreed on, of course no appeal is in this case desirable, or, perhaps we may say, possible.

In case damages are not released or agreed upon, and are claimed by individuals or corporations, add a clause stating the facts:

And we do further report that E F, G H, I J, K L, M N, and O P, etc., claim damages in the matter of said road.

**Claim for Damages.*

State of Illinois, } ss. In the matter of the petition of A B and
 — County. } others for a new road, etc.

(In the County Court of _____ County at the _____ term
 A. D. 18 __, or) Before the County Board of Super-
 visors of _____ County, now in session.

E F hereby claims damages because of the location of the new road described in the petition of A B and others, and the report of L M, X Y, and Z Y, Viewers, in the sum of \$—— (*be sure and set them high enough*), and asks for a jury to view and assess the same.

Dated _____ A. D. 18 __.

E F, or

E F by C D *his Agent (or Attorney.)*

14. Whenever it shall be represented to the county court, by petition of thirty-five voters, that a public road established by said court, or any part thereof, is useless or burdensome, the said court, upon a sufficient sum of money being deposited with the clerk to pay the expenses of a review (such money to be returned if the road shall be declared useless), shall appoint three suitable and disinterested persons to view the same, who shall report to the said court at the next

* Unless this be made as prescribed in Section thirteen, Act April 18, 1873, all claims will be waived.

term after such appointment, whether such road be useless and burdensome, together with their reasons for such opinion; and the county commissioners may then order such road to be vacated, if, in their opinion and discretion, they shall deem such order proper: *Provided*, that no petition praying for the establishment or vacation of a public road shall be received by the said court, unless the same petitioners, or some of them, shall have given twenty days' public notice of such application, by a written notice, posted up in the most public place in each road district through which the road or proposed road shall pass, and a like notice, particularizing the route and important points, on the door of the court-house, and of the county clerk's office, should it be kept in a separate building.¹

PETITION FOR VACATING A ROAD.

State of Illinois, }
 ——— County. } ss. Road District ———

To the Board of County Commissioners of said County:

The undersigned, who are qualified voters, residing within said County, hereby respectfully represent that the road known as *(here describe the road or the part of road to be vacateds, as it wa*

¹ § 14, act April 18, 1873; § 19, c. 93, R. S. 483, 484.

By the common law, the burden of opening and repairing highways, and constructing and maintaining bridges, rests with the counties. The same burden is also imposed on counties, by almost universal usage; and the exception throwing this burden on particular corporations by prescription, only the more clearly shows the general rule.

Hoes v. Canal Trustees, 14 Ill. 402; *Dennis v. Maynard*, 15 Ill. 477.

The seventh section of "An act concerning public roads," approved Feb. 3, 1835, and the second section of "An act to amend the act concerning public roads," approved Jan. 18, 1836, conferred on the county commissioners' courts a general superintending and discretionary power over the subject of public roads and bridges.

Eyman v. The People, 1 Gilm. 4.

County commissioners were then vested with exclusive jurisdiction over all matters in relation to roads in their respective counties.

Nealy v. Brown Co. Comm'rs, 1 Gilm. 10.

The laying out and opening of roads is not an exercise of judicial powers; but the presumption is, that the antecedent proceedings have been regular; which presumption, however, is subject to be rebutted.—*Id.*

APPEAL.—The owner of land, over which a road may be located, may

located) has become useless (or burdensome), do hereby petition
you to vacate said road

And your petitioners pray that you will proceed and vacate said road accordingly.

Dated at this day of 18 .

Names : A B (*et al.*)

At least thirty-five voters must sign this petition, and a sufficient sum of money must be deposited to pay the expenses of a view.

Notice of the application must be given as in the case of a new road. §§ 11, 12, p. 16, *supra*, and forms of notice, affidavit, report, order,* indorsement, etc.

Formal orders reciting the facts must be made and entered of record in each case, whether the application be refused or granted.

appeal from the decision of the county commissioners' court, on the report of the householders.

Hutchins *v.* County Commissioners, 1 Gilm. 345; County of Sangamon *v.* Brown, 13 Ill. 207.

A road is to be considered as established, and, in contemplation of law, opened, when the proper court has approved of the report of the viewers, and sanctioned the location.

Ferris v. Ward, 4 Gilm. 499.

The law of 1835 did not require a survey of the road to be made and filed, but provided that the viewers should designate the course of the road by stakes, marked trees, etc.; and the landmarks made by them, and not their report, will control in determining the locality of the road.

Dunmoss v. Francis, 15 Ill. 543.

A HIGHWAY MAY BE LEGALLY LAID OUT and established by public use, and recognition of it by the proper authorities and by acquiescence.

Dimon v. The People, 17 Ill. 416; Daniels v. The People, 21 Ill. 439.

ABANDONMENT; VACATING OF.—If the public is to be charged with the abandonment of a road, the proof of the fact must be accompanied by the further proof that another road has been adopted in its stead. A public road established by public authority continues as such until it shall be vacated by a like authority.

The City of Peoria v. Johnston, 56 Ill. 45

Champlin v. Morgan, 20 Ill. 181; Town of Lewiston v. Proctor, 27 Ill. 414.

Where it appears that the public have ceased to travel a road, and have acquired another which accommodates public travel, a jury would be warranted in presuming an abandonment of the first road. And it is error to instruct the jury that the new road must accommodate the public equally as well as the former road.

Grube v. Nichols, 36 Ill. 92.

LAYING OUT A ROAD.—For a case where it was *held* that, in an order estab-

* Without the order of the Board of County Commissioners, confirming the viewers' report and vacating the road, the proceedings would be void. *Dempsey v. Donnelly*, 58 Ill. 40,

15. Whenever a new road shall be located, the county commissioners shall immediately cause the supervisors of each district through which such road shall pass to be notified of such location; and it shall be the duty of such supervisors to open such road within their respective districts, and keep the same in repair, so far as the labor of the persons bound to work on said road shall enable them; and if such labor be insufficient, the county commissioners shall cause the same to be cut out and opened at the expense of the county, whenever, in their opinion, the funds of the county will justify such expense; and after being so opened, the same shall be kept in repair by the supervisors, as in other cases.¹

lishing a road, the description of the route was sufficiently certain, see *Clifford v. Town of Eagle*, 35 Ill. 444; in which also the proceedings for laying out and establishing a road are set forth and commented upon in a suit for obstructing the same.

DESCRIPTION OF ROUTE.—Although a road cannot be located from a mere reference to the calls and distances given in the order establishing it, yet if the court can be satisfied, on calling surveyors and receiving proof on the points of location, that the road can be located as laid out, the order laying out the road will be sufficient.

Comm'rs of Highways v. The People, 38 Ill. 348.

THE DESCRIPTION OF A ROAD proposed to be laid out is sufficiently certain, where, from the whole proceedings had thereon, taken together, there appears no difficulty in locating the same.

Todemier v. Aspinwall, 43 Ill. 401.

ROAD THROUGH AN ESTATE.—Damages assessed in favor of the heirs. Separate damages to the widow cannot be assessed.—*Id.*

WIDTH OF ROAD.—Where an order of a county commissioners' court establishing a public highway, omitted to prescribe the width of the road, it was *held*, the order was not a nullity, nor the road opened under it illegal, by reason of such omission, but the proceeding was merely erroneous.

Pierce v. Town of Gilmer, 54 Ill. 25.

It cannot be objected that all the requirements of the statute were not observed, when the owner himself instituted the proceedings, and every act done was with his knowledge and consent, and the question of the want of power cannot arise.

Trickey v. Schlader, 52 Ill. 78.

¹ § 15, act April 18, 1873; § 20, c. 93, *id.*

A SUPERVISOR OF ROADS IS NOT BOUND, at all events, to open and keep in repair a new road; but is only to do so so far as the labor under his control will enable him.

Lequat v. The People, 11 Ill. 330.

16. Any person or persons desirous of having a cart road laid out for his or their convenience, from the dwelling or plantation of such person or persons to any public road, or from one public road to another, or from one lot of land to another, shall present a petition to the county court of the proper county, setting forth the reason for desiring such road, and describing the points from and to which said road or cartway is desired to pass; and the court shall, upon a sufficient sum of money being deposited to pay for viewing such road, appoint three freeholders to view the same: *Provided*, that twenty days' notice shall be given of the intention to present such petition, to each person residing in the county through whose land such cartway is desired to pass; and also by posting up a notice thereof on the door of the court-house and clerk's office of the county, if not kept in the court-house, for the same period of twenty days; and the viewers, when appointed, shall examine the route proposed for such road, and shall examine any other route which they may deem proper; and if they shall be of opinion that a cartway is necessary and proper, from and to the points named in the petition, they shall lay out the same in such manner as to produce the least inconvenience to the parties through whose land the same shall pass, and shall make a written report to the court, describing the route of the road, and the numbers of the lots of land through which the same shall pass, and naming the owners thereof, if known, which report shall be examined by the court; and on hearing the objections, if any, if the court shall be of opinion that the road is necessary and right, an order shall be made establishing the same not exceeding thirty feet wide: *And provided, also*, that if any owner of land shall object to the opening of such road, the same shall not

be opened by the person or persons desiring the same, until the person or persons objecting shall be paid all the damages to be sustained by the opening thereof; and in case the parties cannot agree on the amount of damages, the same shall be ascertained and assessed as hereinafter provided; and the damages being paid on final decision, or a sufficient sum deposited with the court for that purpose, the person or persons applying therefor, their heirs and assigns, shall have the right to open said road, and shall have the right of way upon the same forever thereafter: *Provided, further*, the court may pay a portion of said damages.¹

PETITION FOR A CARTWAY OR PRIVATE ROAD.

State of Illinois, }
 ——— County. }

To the (County Court or) Board of County Commissioners of said County:

The undersigned, who is a freeholder of said County, and lives on the east half of the northwest quarter of section of township number , north of range east of the P. M., by this his petition, asks for a private or cart road, for his use, from his homestead on said tract of land to for the reason that without such cart road he has no adequate means of ingress or egress to and from such homestead, and that such cart road would pass through the west half of said northwest quarter of said section, the land of C D, and through the (*describe each tract or parcel of land, and give the name of the owner through which the road would, if laid out as desired, pass*).

Dated A. D. 18 . A B.

Notice of the Application.

Take notice, That at the next (term or) session of the (County Court or) Board of County Commissioners of the County of , and State of Illinois, to be holden at the Court House in , in said County, commencing on the day of , A. D. 18 , the undersigned intends to and will apply for a cart road to run from his homestead on the (*here describe the road as it is described in the petition.*)

Dated A. D. 18 . A B.

¹ § 16, act April 18, 1873; § 21, c. 93, *id.*

This notice must be served and posted at least twenty days before the session.

Affidavit of Service and Posting.

State of Illinois, }
 ——— County. } ss.

A B, being duly sworn, says: That on the day of
 A. D. 18 , he delivered a true copy of the within
 notice to and left the same with C D, E F, G H (*here name all
 persons residing in said County through whose lands the road is to
 pass*), respectively, and that afterwards on said day he posted a
 copy of the same on the Court House door in said County, and
 another copy on the door of the Clerk's office of said County, and
 further affiant saith not.

[*Jurat.*]

A B.

Be present on the first day of the session (or term), file the petition and affidavit, make a sufficient deposit of money to pay for a view, and if there be objections,* be prepared to overcome them. If the decision be in favor of the road, or there be no objection, three viewers will be appointed.

Resolution (or Order) Appointing Viewers.

The petition of A B, asking for a private or cart road, coming up for consideration, and proof of notice being filed and deposit made as prescribed by law, and objections being made by C D, and heard (or no objection being made), (ordered or) resolved, That L M, County Surveyor, and X Y and Z Y, three disinterested freeholders of said County, be and hereby are appointed to view the ground and report.

Notice with certified copy of the petition and order should be obtained from the County Clerk and given to the Viewers.

Then the Viewers† (except the Surveyor) will be sworn, and will view, and if they be of the opinion that the cartway is necessary and proper, will proceed to lay it out as prescribed, and will report.

* See § 23, *infra*. It has, however, been held that a private way cannot be established by commissioners over lands against the objections of owners. *Nesbitt v. Trumbo*, 39 Ill. 110; *Crear v. Crossly*, 40 Ill. 175. The remedy against the commissioners proceeding to lay out such private way is by appeal, not by injunction. *Winkler v. Winkler*, 40 Ill. 179.

† Where a report is signed by two of three viewers of a road, it will be presumed that the third was present and consulting, until the contrary be shown. *Louk v. Woods*, 15 Ill. 256.

The damages, if possible, should be agreed upon and paid or released, or they will have to be, if indeed they can be,* ascertained and assessed by a jury, and the amount of their verdict, with costs paid into court, before the road can be opened.

17. Whenever any person or persons desire a change or relocation of any state or county road now located, notice of such intended application shall be given by putting up advertisements in writing, at least one in each road district through which said road shall pass, and on the court-house door, twenty days previous to the sitting of the court to which application shall be made; and on the petition of thirty-five qualified voters, living immediately in the vicinity of such road, the court shall appoint three viewers to examine and make the necessary relocation; they shall carefully view the road as located, and the ground for the proposed route, and being of the opinion that the public good requires an alteration, in view of obtaining a more suitable place to erect a bridge over a stream, wind a hill, avoid a swamp, expensive work, or where the present road greatly damages an individual, and can be varied without material damage to the public, in such cases alterations may be made; and a majority of said viewers being of that opinion, they shall cause a survey and relocation to be made, returning to the county court a plat, with the courses and distances of the road as established. But if they consider an alteration not necessary they shall so report, and the court may confirm and accept the report or take such further action thereon as to them may seem right. In like manner, any state road now established, which may be considered useless or burdensome, on notice, petition, view and report to that effect, as required in this section in case of an alteration, the same may be annulled and vacated.¹

¹ § 17, act April 18, 1873; § 31, c. 93, *id.*

* Nesbitt v. Trumbo; Crear v. Crossly, *supra*.

PETITION FOR ALTERING OR RELOCATING A ROAD.

State of Illinois, }
 ——— County, } ss. Road District ———

To the Board of County Commissioners of said County:

The undersigned, who are qualified voters, residing in the immediate vicinity of the road known as
 do hereby petition you to alter (*or relocate*) said road as follows:
 Commencing at
 in said road district, and running the line of said road as follows,
 viz.:

And your petitioners pray that you will proceed and alter said road accordingly.

Dated at this day of 18 .

Names: A B, etc.

At least thirty-five qualified voters must sign this petition.

Notice of the application must be given as in the case of a new road, by posting notices. See §§ 11, 12, p. 16, *supra*, and forms of notice, affidavit, report, order,* etc.

18. When it shall become necessary to have a state or county road now located and established, altered, relocated or vacated at a county line, or a new road laid out, the same being petitioned for and notice given as required in the preceding section, the same shall be agreed upon by viewers from each county, to be appointed by the counties immediately interested, and no road shall be altered at a county line, or elsewhere, unless a majority of the viewers appointed agree on such change or alteration: *Provided*, that no application shall be acted upon or viewers appointed, as contemplated in the preceding sections, unless the petitioners deposit money sufficient to pay the viewers in case an unfavorable report be made, to be refunded should the road be located, altered or vacated, as peti-

* Without the order of the Board of County Commissioners, confirming the viewers' report and relocating the road, the proceedings would be void. *Dempsey v. Donnelly*, 58 Ill. 40.

tioned for. In case of a disagreement in the location or alteration of any road crossing a county line by the county authorities, either county may appeal to the circuit court, who shall hear and determine the case, grant a review, appoint reviewers, and make such order therein as shall seem right in the establishment of the road in dispute.¹

19. In all cases where a petition is presented to the county court, praying for a change, alteration, location, or vacation of a county road, as provided for in this act, if there shall be remonstrances presented against granting the same, it shall be the duty of said court to give due consideration both to the petition and remonstrance, and grant or refuse the prayer of such petitioners as in their discretion shall be just and proper.²

REMONSTRANCE.

State of Illinois, }
 ——— County. } ss.

To the Board of County Commissioners of said County :

We, the undersigned, do hereby remonstrate and enter *our protest* and objections to the change (*alteration, location or vacation, as the case may be,*) of the road described in the petition of A B and others.

Dated at this day of 18 .

Names: C D, and many others.

Verdict of Jury — Assessment of Road Damages.

State of Illinois, }
 ——— County. } ss. Before ———

Verdict of jury in the matter of the assessment of damages consequent upon the of a road over lands described and owned as follows, viz. :

Description of land :	Owned by :
(Here describe each tract with legal certainty.)	(Here give the owner's name, if known; if not, say "owner unknown.")

¹ § 18, act April 18, 1873; § 32, c. 93, *id.*

² § 19, *id.*

We, the jury summoned to assess damages in the above cause, having taken the oath required by law, and having heard the evidence presented, and having in a body visited and examined the location of the said road, the lands to be taken and affected by the proposed _____ of the same, do assess the damages at what we deem just and right to each of said claimants (having first estimated and deducted the advantages and benefits), as follows, viz. :

To the said _____	the sum of _____	dollars ;
To the said _____	the sum of _____	dollars ;
To the said _____	the sum of _____	dollars ;
To the said _____	the sum of _____	dollars ;

The above verdict given under our hands, this _____ day of
18 .

Jurors should here sign their names
(IN FULL).

20. All roads shall be surveyed, and a plat, with the courses and distances thereof, returned with the report of the viewers to the county court, which shall be recorded and filed. The county court, on the return of the report and plat, shall determine and establish on record the width of the road, making the main leading roads four rods wide and none less than fifty feet.¹

21. In the location and alteration of all roads, it shall

¹ § 20, act April 18, 1873; § 33, c. 93, *id.*

REPORT; SURVEY; PLAT.—Under township organization, before a new road can be opened, or an old one changed, there must be a report and survey; these and a plat of the road must accompany the order of the commissioners declaring such highway opened, which order, with the petition, should be left with the town clerk, who should note the time of filing.

Town v. Town of Blackberry, 29 Ill. 137.

AFTER THE OWNER OF LAND has accepted the damages allowed for opening a highway, it is too late for him or his grantee to declare the proceedings for opening it void.—*Id.*

THE PROCEEDINGS IN RELATION TO THE OPENING of a highway must be filed with the town clerk, within a reasonable time after they occur. But his neglect to mark the correct time of filing will not be fatal. A substantial compliance with the requirements of the statute is all that is necessary.

Town v. Town of Blackberry, 29 Ill. 137; Allison v. Comm'rs of Highways, 54 Ill. 170.

AN OVERSEER OF HIGHWAYS, in order to justify for opening a road, under

be the duty of viewers to make the same as direct as the ground and circumstances will allow, particularly the main leading roads. Previous to entering upon their duties, they shall be sworn before some officer authorized to administer oaths, that they will faithfully, impartially, and to the best of their judgment, discharge the duties incumbent on them as road viewers, under the law and appointment of the court.¹

22. County surveyors may act as road viewers in their respective counties, without further qualification, and may administer the proper oath of office to other road viewers who may be associated with them or otherwise.²

23. In all cases where a public road shall have been or may be authorized by law to be laid out or constructed in this state, either by state or county authority, and the same is required to pass over the land belonging to any company, corporation or individual, and the owner or owners shall object thereto, and cannot agree with the commissioner, superintendent or supervisor authorized to construct the same, on the amount of damage which such owner or owners may claim, it shall be lawful and shall be the duty of the county court to cause a jury of six freeholders to appear before said court, at such time as may be fixed by said court; and

an order of the commissioners of highways, must show that a case existed which justified the order issued by them.

Guptail v. Teft, 16 Ill. 365.

Where a road, after its survey and location, has not been opened for the use of the public, nor the proper notice given to the owner of the land to remove his fences, neither the commissioners of highways nor any other person can remove a fence without becoming trespassers.

Taylor v. Marcy, 25 Ill. 518.

HIGHWAY COMMISSIONERS CAN BE MADE TO RESPOND IN DAMAGES, if they are misled as to the correct line of a road, and in attempting to open it commit a trespass.

Beyer v. Tanner, 29 Ill. 135.

¹ § 21, act April 18, 1873; § 34, c. 93, *id.*

² § 22, *id.*

the said jury, after being duly sworn faithfully and impartially to examine the ground which shall be pointed out to them, shall assess the damages which the owner of the land will sustain by the said road, and make written report to the said court, at such time as the court may direct — a copy of which award shall be furnished to the party claiming damages; and the money being paid or tendered to the party to whom the same is assessed, the said road may be opened by the proper authority of the county, and the right of way acquired by the public for a public road: *Provided*, that the corporation, company, owner or owners of the land shall have the right to appeal from the award of the jury to the circuit court, within twenty days from the approval of said award by said county court, upon executing bond, to be approved by said court, and the case shall be acted upon in such manner as the circuit court may determine, with a view to justice, and make such order thereon as may seem right and just — which decision shall be final. The provisions of this section shall extend to the right of way for a cartway or private road, as contemplated in section sixteen of this act.¹

24. If any person shall obstruct any public or private

¹ § 23, act April 18, 1873. See § 38, c. 93, *id.*

PRACTICE.—For a full discussion of the practice in the county and circuit courts, in the matter of proceeding to claim damages for the laying a road over the claimant's land; and the questions to be decided in said courts, and the right to and who may appeal, and how, from the county court to the circuit court; consult *County of Sangamon v. Brown*,

13 Ill. 207.

DECISION OF THE CIRCUIT COURT is final in proceedings to locate highways. *Sangamon Co. v. Brown*, 13 Ill. 210; *Marion Co. v. Harper*, 44 Ill. 482.

A CLAIM FOR DAMAGES OCCASIONED by the location of a public road, is not to be presumed, but must be expressly made, and at the proper time, so that if the state or county thinks the payment of damages too great a sacrifice for the benefits to be obtained by having a road, it may abandon the project, or locate it elsewhere.

County of Sangamon v. Brown, 13 Ill. 207; *Ferris v. Ward*, 4 Gilm. 499.

COMMISSIONERS APPOINTED TO ASSESS the damages a party may sustain by the opening of a road across his premises, have not authority to make an

road by felling a tree or trees across the same, by encroaching upon or fencing up the same (except for the purpose of raising a hedge, in which case not more than one-fourth of the width of the road shall be occupied for such purpose), or by placing any other obstruction therein, he shall forfeit for any such offense a sum not exceeding ten dollars, and a sum not exceeding three dollars for every day he shall suffer such obstruction to remain, after he shall have been ordered to remove the same by any supervisor, county commissioner or justice of the peace; and if any person shall purposely destroy or injure any bridge or causeway, or remove any of the timber or plank thereof, or destroy or deface any guide board, post or milestone on a public or private road, or dig any drain or ditch across a public or private road, such person so offending shall be indicted or sued before a justice of the peace, and on conviction shall be fined in any sum not less than five dollars nor more than one hundred dollars, except bridges, which shall be double the value thereof, and

agreement in relation thereto; and any such unexecuted agreement may be revoked.

Kimball v. Yates, 14 Ill. 464.

DAMAGES.—Under the provisions of the law of 1851, for township organization, the public is excluded from opening or using a highway until the damages are assessed or agreed upon, or released in writing.

Norton v. Studley, 17 Ill. 556.

ADJUSTMENT OF DAMAGES.—The question of damages must be satisfactorily adjusted by release or assessment, or in some other recognized mode, before an owner can be forcibly dispossessed of his property. The act of 1861 does not require the owner to be present and claim damages as did the old law, but the commissioners, in case they and the owner cannot agree, must assess them at what they deem just and right, and deposit a statement of the amount assessed with the town clerk, who shall note the time of filing the same. Injunction restraining commissioners made perpetual.

Comm'rs of Highways v. Durham, 43 Ill. 86.

THE DECISION in *Taylor v. Marcy*, 25 Ill. 518, is modified to conform to the above.—*Id.*

DAMAGES; ESTOPPEL.—If parties, over whose land a road has been laid, having notice, real or constructive, fail to claim damages at the appropriate time, they will ever afterwards be estopped.

Taylor v. Marcy, 25 Ill. 518. See 29 Ill. 137.

for burning a bridge, to be punished agreeably to the criminal code: *Provided, however*, that this section shall not be construed to extend to any person who shall lawfully cut down any timber for rails, firewood or other purposes, and who shall immediately remove the same out of the road, nor to any person through whose land a road shall run, who shall dig a ditch or drain across such road, and keep the same in good repair.¹

25. If any person or persons shall obstruct any public or private road, in the manner provided in sections twenty-four (24) and twenty-five (25) of this act, the penalty

¹ § 24, act April 18, 1873. See § 16, c. 93, *id.*

When one obstructs a road which is used by the public, for even the shortest period of time, he does it at his peril; for if it should be made to appear that such road was legally established, he would be accountable, whether he had actual knowledge of the fact or not.

Ferris v. Ward, 4 Gilm. 499.

Where a person obstructs a highway which has actually been opened, traveled, and worked, under an order of the commissioners establishing the same (such order not stating the width of the road), he will be liable therefor, as for obstructing a legally established highway.

Pearce v. Town of Gilmer, 54 Ill. 25.

The fact that a road is but little used does not authorize a party to close it up.

Dumoss v. Francis, 15 Ill. 543.

A NOTICE BY A SUPERVISOR, requiring a person to remove two certain rail fences built by him across a public road, and specifying the particular place of obstruction by stating the direction of the fences made by him, is sufficient.

Ferris v. Ward, 4 Gilm. 499.

THE REMEDY FOR OBSTRUCTION of a highway is complete at law.

Dunning v. City of Aurora, 40 Ill. 481.

PENALTY.—For continuing an obstruction to a highway, a party should be prosecuted civilly for the penalty, after he shall have been ordered to remove it.

Sweeney v. People, 28 Ill. 208.

No authority is given to an individual to sue in his own name for a penalty for continuing the obstruction of a road; and no jurisdiction is given to a justice of the peace in the premises. The offenses of obstructing and continuing to obstruct a road distinguished.

Crosby v. Gipps, 19 Ill. 310; *Bickerdike v. Dean*, 21 Ill. 199.

SUITS.—A supervisor may institute proceedings to recover the penalties for obstructing roads, given by the road law of 1841, before justices of the peace.

Ferris v. Ward, 4 Gilm. 499.

REMOVING FENCE FROM SUPPOSED HIGHWAY.—Where sued in trespass, it is error to reject evidence that defendants acted under a resolution adopted at a

provided for in said sections may be recovered either by an indictment, or in an action of debt, before any justice of the peace of the county in which the offense

town meeting; such evidence is admissible to repel the idea of malice, and thus to mitigate punitive damages.

Gray *v.* Waterman, 40 Ill. 523.

ANY PERSON MAY REMOVE a fence erected across a highway, without being guilty of trespass.

Marcy *v.* Taylor, 19 Ill. 634.

In an action to recover a penalty for obstructing a highway, if the complaint gives a local description, sufficient to fix the precise point obstructed, and also the *termini* of the road, the latter may be disregarded. But when the allegation is general, that a road leading from one point to another has been obstructed, the existence of the road between the points named must be proved, as a matter of essential description.

Town of Lewiston *v.* Proctor, 27 Ill. 414.

EVIDENCE, AMOUNT OF.—In prosecutions for obstructing highways, the defendant's guilt must be established by a clear preponderance of evidence, but not necessarily beyond a reasonable doubt.—*Id.*

A party is not liable, as a matter of course, to the highest penalty imposed for obstructing a highway.

Leech *v.* Waugh, 24 Ill. 229.

A street of an incorporated town or village, when dedicated, is a public highway, and any person obstructing it will be liable to the statutory penalty. Otherwise if it is incorporated, as then the streets are vested in the town, and are subject to the corporate authorities.—*Id.*

DEDICATION.—The person making a town plat and dedication, thereby vests the legal title to the streets and alleys therein to the corporation of the town; and such person cannot bring an action of trespass for an injury to the soil or freehold, as in case of highways.

Hunter *v.* Middleton, 13 Ill. 50.

WHERE THE OWNER OF PREMISES IN CHICAGO, without authority from the city, elevated a sidewalk, in which he placed a grating next to his building, which was so defective that a person stepping upon it fell through into the area and was injured: *Held*, that no want of due care on the part of the party injured appearing, the owner of the premises was liable for the injury.

Stephani *v.* Brown, 40 Ill. 428.

NOR DID IT ALTER THE CASE that sufficient room was left to pass on the sidewalk.—*Id.*

NOR THAT the premises were rented to another.—*Id.*

FOR OBSTRUCTION OF STREETS.—As to power of corporate authorities of towns and cities to punish by fine.

Ill. Cen. R. R. Co. *v.* City of Galena, 40 Ill. 344; T. P. & W. R. W. Co. *v.* Town of Chenoa, 43 Ill. 209.

THREATENED INCLOSURE OF HIGHWAY.—Plank-road. Injunction allowed.

Craig *v.* The People, 47 Ill. 487.

WHERE A PLANK-ROAD has been used for a number of years by the public, and a company have used for a number of years a portion of the public highway as their roadway, causing the public road to be closed up to divert travel to their road, they cannot close up their road against the public.—*Id.*

THE PROVISIONS OF THE STATUTE in relation to selling plank-roads to

was committed, which action may be brought upon the complaint, on information, of any person who may complain, for the use and benefit of the county.¹

26. If any person shall impair any public or private road, by plowing or turning a current of water so as to saturate or wash the same, he shall forfeit and pay a fine, for the first offense five dollars; and for a second offense ten dollars; and at that rate for every additional offense, which fines shall be collected either before a justice of the peace or by indictment in the circuit court, as now provided by law.²

27. If any person shall ride, lead or drive any wagon, carriage, dray, cart or other vehicle or conveyance, or any horse, mare, mule or ox, or other animal, over, on or across any public bridge, or any bridge used by the

counties, on the expiration of the charter of the road, does not confer authority on the company to close up such road until the county purchases.—*Craig v. The People*, 47 Ill. 487.

A BRIDGE CONSTRUCTED ON THE MOST APPROVED PLAN, at the proper place, and with sufficient channel between the piers, over any of our navigable waters, cannot under any circumstances be held to be a material obstruction to the navigation, if it appear that in ordinary times with ordinary wind and water, the draw can be safely passed, and that no better structure could be erected for the purpose designed, with the amount of outlay demanded for such undertakings. If on reaching one of these bridges the vessel should be overtaken by an unfavorable wind, or by any circumstance that would render some delay prudent, the delay must be incurred, for the right to erect the bridge is coextensive with the right to navigate the river. A mere delay in passing a bridge, which prudence would advise at unpropitious moments, when wind and currents are not favorable, cannot affix to it the quality of a material obstruction, or of any other description of obstruction, for the erection of which the owners should be liable in damages.

Ill. Riv. Packet Co. v. Peoria Bridge Asso., 38 Ill. 467; *City of Chicago v. McGinn*, 51 Ill. 266.

APPROACHES TO A BRIDGE.—Where a bridge is erected across a canal within the corporate limits of a city, so long as the trustees of the canal do not object, the city has ample authority to make approaches to the bridge and exercise control over them. And where the city, in the exercise of its authority, undertakes to make the passage-ways to a bridge erected under such circumstances, there can be no doubt of its obligation so to exercise its authority as not to endanger the lives or limbs of its inhabitants.

City of Joliet v. Verley, 35 Ill. 58.

¹ § 25, act April 18, 1873. See *J. & C., Fines*.

² § 26, *id.*

public, within the limits of this state, faster than a walk, he shall forfeit and pay, for each offense, the sum of five dollars, which penalty shall be collected, either before a justice of the peace or by indictment in the circuit court of said county, as is provided by the last preceding section.¹

III. THE COUNTY COURT, OR THE BOARD OF COUNTY COMMISSIONERS (Art. 10, § 6, Const. 1870) — JURISDICTION; SUPERVISORS (OF ROADS).

28. Board of county commissioners, vested with the general superintendence over public roads, may cause new roads to be located, and to alter or vacate roads within their respective counties.

29. At the December term annually to divide their respective counties into ROAD districts, and appoint a supervisor for each road district; first supervisors, however, to be immediately appointed, and districts to be made.

30. Notice of their appointment to be served by the sheriff on the several supervisors, accepting which they are each to return a poll list within fifteen days to the county clerk; sheriff's return; fines for nonfeasance and misfeasance of the county clerk and sheriff prescribed.

31. Failure of supervisor to accept, mulcts him in a five dollar fine, for the benefit of roads; the county court may excuse him, and create vacancies, and shall fill them promptly at the term when they occur.

32. Duties of the supervisor detailed and prescribed; to maintain and properly keep roads and bridges in his district in good repair, together with guide boards, etc.

33. To remove obstructions, repair and rebuild roads and bridges, and call out the persons owing road labor for such purpose to perform it; if the expense will not exceed ten dollars, may hire; if it will, then he is to report for instructions to the board of county commissioners.

34. The county court, at the December term in each year, to prescribe road labor for the able-bodied males between the ages of twenty-one and fifty, to be certified to each supervisor.

35. Road tax not exceeding twenty cents on each one hundred dollars of taxable property within the county may be assessed by the county court annually, at the September term; tax book; but the tax system as a whole may be adopted.

36. The labor system, *modus operandi*—tax list to be made by the clerk and delivered through the sheriff to the supervisor of every road district, under prescribed penalties for failure, etc.

37. Supervisor to give three days' notice; work, how performed, etc.

38. The tax list; notice to be given; work, how performed, etc.

39. Incorporated cities, towns and villages; the charter to govern in the matter of highway labor and taxes.

28. The county courts of the several counties in this state not under township organization, shall have and

¹ § 27, act April 18, 1873.

are hereby vested with general superintendence over the public roads within their respective counties, and are hereby authorized to cause new roads to be located and made, and to alter or vacate public roads within their respective counties, in the manner in this act provided and pointed out.¹

29. The county court, in counties not under township organization, of each county, shall, at their December term, or as soon thereafter as may be, in each and every year, lay out and divide their respective counties into such road districts as they may deem convenient and proper, defining accurately the boundaries of said districts; and they shall appoint one supervisor in each district, who shall serve one year, and continue in office until a successor shall be appointed: *Provided*, that the county courts of all counties not under township organization shall, at their first meeting after the passage of this act, appoint supervisors, and divide their respective counties into districts, as contemplated in this section.²

Division of County into Road Districts and Appointment of Supervisors.

State of Illinois, }
 — County. } ss.

The Board of County Commissioners,
 in session December, A. D. 18 .

[*Placita.*]

Present: A B, C D, and E F, *Commissioners*,
 L M, *Sheriff*, O P, *County Clerk*.

At the present session of the Board of County Commissioners of the County of , in the State of Illinois, pursuant to statute in such case made and provided: Ordered, That said County be and hereby is divided into road districts, as follows: Township number , north of range , P. M., shall be road district number one; township number , north of range , P. M., shall be road district number two, (*and so on, describing and locating each district according to government survey*.) and that the following named persons be and

¹ § 28, act April 18, 1873; § 10, c. 93, *id.* ² § 29, *id.* See § 11, c. 93, *id.*

hereby are appointed respectively for such districts, as follows: B A, Supervisor for road district number one, B E for road district number two, etc.

A true record attest :

—— ———, *County Clerk.*

30. It shall be the duty of the clerk of the county courts in each county, to make out and deliver to the sheriff written notices to all the supervisors, as aforesaid, within ten days after such appointment has been made, informing them of their said appointment, describing the bounds of their respective districts, and the roads therein ; and the said sheriff shall immediately deliver the said notices to the persons to whom the same shall be directed, respectively ; and if any supervisor shall refuse to accept his said appointment, the sheriff shall return the said notice to the clerk who issued the same, noting such refusal on the back thereof. But if the said supervisor shall agree to accept the same, such supervisor shall, within fifteen days thereafter, return to the clerk of the county court a list of the names of all persons residing within the road district liable to be taxed for road purposes ; and the said sheriff shall notify the said clerk of such acceptance. And the said sheriff shall, in all cases, make return of acceptance or refusal within twenty days after the delivery to him of the notice aforesaid. For any failure on the part of the clerk to make out and deliver to the sheriff any one of the notices required by this section he shall be fined in the sum of ten dollars ; and the sheriff shall incur the same penalty for a failure to deliver any one of said notices in the manner and within the periods herein prescribed : *Provided*, that supervisors shall not be required to make such return, unless the county court shall have levied a tax according to the provisions of this act : *Provided, further*, that any

county court or board of county commissioners are hereby authorized and empowered to open and keep in good repair all public highways in their respective counties, and to build and keep in repair all bridges, either by taxation in whole or in part, or by labor in part and taxation in part, as they may elect.¹

NOTICE OF APPOINTMENT TO SUPERVISORS.

State of Illinois, } Office of the Board of County Commis-
 County. } ss. sioners of said County.

The People of the State of Illinois to

You are hereby notified that at the session of said Board, and on the day of A. D. 18 , you were appointed Supervisor of road district No. , in said County, which is described as follows, to wit:

(Here describe the Supervisor's district.)

Witness, N O, County Clerk of said County, and the seal of said Board at this day of A. D. 18 .

[SEAL.] ———, *County Clerk.*

To the Sheriff of said County to serve and return.

Sheriff's Return of Acceptance Indorsed.

State of Illinois, }
 County. } ss.

This is to certify that at on the day of A. D. 18 , I served the within notice on B A, Supervisor therein named, by delivering to and leaving with him a true copy thereof, who then and there accepted the appointment of Supervisor of road district number , of said County.

A F, *Sheriff of said County.*

Dated at A. D. 18 .

Sheriff's Return of Refusal Indorsed.

State of Illinois, }
 County. } ss.

This is to certify that at on the day of A. D. 18 , I served the within notice on B A, Supervisor therein named, by delivering to and leaving with him a true copy thereof, who then and there refused to accept the appointment of Supervisor of the first road district of said County.

A F, *Sheriff of said County.*

Dated at A. D. 18 .

¹ § 30, act April 18, 1873. See § 12, c. 93, *id.*

31. When any person shall refuse to accept the appointment as supervisor, or after having accepted the same, shall fail to perform the duties thereof, he shall be fined five dollars, to be appropriated to road purposes: *Provided*, that the county court may excuse any supervisor from the payment of said fine, upon being satisfied that such person ought not to have been appointed. The county court shall have power, at any time, to remove from office any supervisor who shall fail or refuse to perform his duty, and all vacancies shall be filled at the term of court at which any removal shall be made or vacancy occur.¹

Order Filling Vacancy.

B A having refused to accept the appointment of Supervisor of the first road district, Ordered, that C D be and hereby is appointed to fill the vacancy.

The clerk will thereupon issue a notice to C D, and the Sheriff will serve the same.

32. It shall be the duty of each supervisor to cause all the public roads within his district to be kept well cleared, smooth, and in good repair; causing all stumps to be cut low, so as to afford at all times a free and safe passage to wagons and other carriages along such road; to cause bridges and causeways to be made wherever the same shall be necessary, and to keep the same in repair; and to cause to be erected and kept in repair, at the forks or crossing place of every public road, a post and guide-boards, with plain inscriptions thereon in letters and figures, giving the direction and distance to the most noted places to which said roads may lead.²

¹ § 31, act April 18, 1873. See § 13, c. 93, *id.*

² § 32, *id.* See § 14, c. 93, *id.*

A city is grossly derelict in its duty in constructing a passage along a precipice without having sufficient guards for the protection of travelers. It does

33. Whenever any public road shall be obstructed by fallen timber, or in any other manner, and when any bridge or causeway shall be destroyed, or become impassable or dangerous to travelers, it shall be the duty of the supervisor to cause such obstruction to be removed, and to have such bridges or causeways rebuilt or repaired; and for that purpose he shall call out the persons bound to labor on the road in his district, or as many of them as may be necessary; but if the persons bound to perform such labor in his district shall have previously performed the number of days required by this act, or if the labor due from such persons shall not be sufficient, he shall then proceed to hire as many laborers or teams as may be necessary to remove such obstruction or repair such damages: *Provided*, that in counties electing to keep up roads in their respective counties, by taxation, then and in that case the supervisor shall proceed to hire as many laborers or teams as may be necessary to remove such obstructions or repair such damages: *And provided, further*, that the cost shall not exceed ten dollars; and if the cost of such work shall be estimated by said supervisor to exceed ten dollars, then he shall report such obstruction or damage to any one or more of the county commissioners, whose duty it shall be immediately to cause such obstruction to be removed, or such bridge or causeway to be rebuilt or repaired, as the case may be, either by ordering the supervisor to hire laborers and

not require an expert to show that a narrow passage-way along a precipice of twelve feet, where a misstep or the slightest accident may precipitate the traveler headlong therefrom, is not the degree of safety and security which the law requires.

City of Joliet v. Verley, 35 Ill. 58.

The rule is, that where the loss is the combined result of an accident and a defect, yet if there be no fault or negligence of the plaintiff, if the accident be one which common prudence and sagacity could not have foreseen and provided against, the town is liable.—*Id.*

Chicago v. Gallagher, 44 Ill. 295; City of Lacon v. Page, 48 Ill. 499.

teams for that purpose, or by making a contract with some fit person or persons, as they may deem best; and all moneys required to carry any of the provisions of this section into effect, shall be paid out of the county treasury, on the order of the county court.¹

34. The county courts of the several counties in this state, who shall adopt the system of part tax and part labor or all labor, at the December term, annually, shall fix and cause to be entered upon the records of their courts a certain number of days, not exceeding three nor less than two, that each and every able-bodied man between the ages of twenty-one and fifty years shall labor on some public road within the county during the year. And it shall be the duty of the clerk of said court to certify the number of days fixed as aforesaid in the notice to each supervisor appointed in said county.²

Order Fixing the Number of Days' Road Labor for the Year.

Ordered, That each and every able-bodied man between the ages of twenty-one and fifty years shall labor on some public road, within the County, three days during the year A. D. 18 .

This order should be entered at the December session.

35. The county court of each and every county, in addition to the work required in the foregoing section (34), may, at the September term, annually, assess a road tax of not more than twenty cents on each one hundred dollars' worth of taxable property, real and personal, or either, in their counties; and a column in the tax book shall designate the amount of such road tax due from each person from whom the same is to be collected; which road tax, assessed on property owned by citizens living in incorporated towns of the county,

¹ § 33, act April 18, 1873. See § 15, c. 93. R. S. 1845, p. 482.

² § 34, *id.*; *Sawyer v. City of Alton*, 3 Scam. 127.

and also owned by non-residents of the county, shall be collected by the collector as other county revenue, and paid into the treasury in like manner; and the county court shall appropriate the same on roads and bridges as they may deem proper: *Provided*, that counties electing to work under the tax system in whole, for road purposes, may levy a road tax not exceeding forty cents on every one hundred dollars' worth of property, real or personal, as provided in section thirty of this act.¹

Order Assessing Road Tax.

Ordered, That there be and hereby is assessed a road tax of *fifteen* cents on each one hundred dollars' worth of taxable property, real and personal, in this County.

This order should be made and entered at the September session.

36. The clerk of the county court, in all counties adopting the labor system, in whole or in part, shall, by the first day of February in each year, make out a list of all persons owing road tax in each road district in the county, with the amount of tax due from each person; which list shall be by said clerk delivered to the sheriff, and by him delivered to the proper supervisor within twenty days from the date such list is delivered to the sheriff; and any clerk or sheriff who shall neglect or fail to perform the duties required in this section within the time specified, shall be liable to the penalties stated in section thirty of this act.²

Tax List.

A list of all persons who have been assessed a road tax by the Board of County Commissioners of the County of _____, and State of Illinois, for the year 18____, and who are now owing said tax either in money or labor in Road District No. _____ in said County.

¹ § 35, act April 18, 1873. See §§ 23, 24, c. 93, *id.* ² § 36, *id.* See § 24, c. 93, *id.*

Names.	Amount Assessed.	Paid in Money.	Paid in Labor.	Remarks.
--------	---------------------	-------------------	-------------------	----------

37. It shall be the duty of each supervisor in counties not levying a tax exclusively for road purposes to call on all-able-bodied male persons over twenty-one and under fifty years of age, in his district, to perform the number of days' labor due for the year, giving such person at least three days' notice of the time when and place where the work is required, and stating what description of tools to bring; which notice shall be given by the supervisor in person verbally, or by a written or printed notice, or by some person appointed by him to warn in the hands; in which latter case the notice shall be written or printed, and signed by the supervisor. The supervisor shall observe the hour appointed to meet, that each individual do appear at the time with the tool directed to be brought, and when on the road, that each person shall work industriously and diligently, doing at least eight hours' faithful labor in each day at such work, and in such manner as shall be directed by the supervisor. Any person neglecting or failing to attend and do the work due on the roads, after being notified as above stated, by himself or a substitute equally able as himself, shall pay for each day such sum as the county court shall fix at the time of fixing the number of days. Should any person be idle, not work diligently, be turbulent, interrupt other hands, or disobey the supervisor, power is hereby given, and it shall be the duty of the supervisor to discharge said hand from the road; and for each day's labor which may then be due from such person, he shall be bound to pay one dollar and fifty cents.¹

¹ § 37, act April 18, 1873.
Forms of procedure for collection of fines may be found under Sec. II.
infra; see also J. & C.

3

Supervisor's Notice — Warning to Work.

State of Illinois,)
 ——— County. } ss. Office of the Supervisor of Road District
 number , A. D. 18 .

To Mr. ———

You are hereby notified* that there has been assessed against you the sum of dollars and cents, road tax for the year 18 , and to pay the same at my office on or before the day of 18 , or to appear at with a (*shovel, pick or other tool desired*) on the day of 18 , for the purpose of working out said tax at the rate of \$ per day, as fixed by the (County Court or) Board of County Commissioners.

—————, *Supervisor.*

38. The tax list being placed in the hands of the supervisor, he shall notify each person residing in said supervisor's district, of the amount due, and that the same may be discharged in labor on the road, and shall thereupon request payment in money or labor, first notifying such person of the time and place, to attend and work the same out at the rate of such sum per day as the county court may fix, bringing with him such tools as may be directed by the supervisor — the labor to be performed by the principal or a substitute equally able, working at least eight hours each day; and if such person shall spend the day in idleness, be turbulent, or disobey the supervisor, he shall be discharged from the road, and the balance due shall be collected with twenty-five per cent. advance: *Provided*, all money collected by supervisors for road purposes, shall be disbursed on some road within their district.¹

¹ § 38, act April 18, 1873; § 26, c. 93, *id.*

Under our constitution the right of taxation cannot be granted either to private persons or private corporations.

Harward v. St. Clair Drain Co., 51 Ill. 130; *Hessler v. The Drainage Comm'rs*, 53 Ill. 105; *Lovington v. Wider*, *Id.* 302.

All the personal property of the tax-payer is bound for the payment of

* The act of April 18, 1873, § 40, makes it the duty of the Supervisor to bring suit for all labor and taxes against each person who shall fail to pay or perform the same, pursuant to notice.

39. Where any city or town has or may become incorporated under a special law, or under a general law authorizing cities to become incorporated, no requisition in labor or money from the citizens thereof, on property within said corporation, shall be required to improve roads in the county different from the grant in the charter, but they shall be required to work and pay a tax to improve the streets and roads, and such improvements as shall be specified in the charter, or within the limits of the incorporation, so long as the charter or incorporation shall remain in full force. In all towns and villages not incorporated, the citizens thereof shall contribute in labor and by tax, when assessed by the county court of the county, in improving the streets of the town or village, and the public roads of the road district, including the same, under the supervisor.¹

his taxes, from the time the collector receives his warrant until they shall have been paid. The warrant, like an execution, operates as a lien.

Hill v. Figley, 23 Ill. 418.

The legislature has no power, under the constitution, to exempt any person, or community of persons, from the payment of taxes. But it may commute a tax for a payment of money or other equivalent; and it is the sole judge of the propriety and value of such equivalent.

Hunsaker v. Wright, 30 Ill. 146.

A poll-tax was inhibited by the constitution of 1818. *Nance v. Howard*, Breese 183. But this was changed by the constitution of 1848.

A poll or capitation tax, without regard to property, is constitutional; and so is the act of the legislature requiring road service or labor from each male inhabitant between the ages of twenty-one and fifty years.

Sawyer v. City of Alton, 3 Scam. 127.

An assessment of labor, for the repair of roads, is not a tax.

Town of Pleasant v. Kost, 29 Ill. 490.

An assessment of road labor is not a capitation tax.

Town of Pleasant v. Kost, 29 Ill. 490; *Fox v. City of Rockford*, 38 Ill. 451.

¹ § 39, act April 18, 1873; § 8, Laws 1847, 112.

The law of 1847, exempting the inhabitants of town and city corporations from road labor outside of their corporate limits, is constitutional; and the inhabitants are not bound to labor outside of their corporate limits, or under other than their corporate authorities.

Town of Pleasant v. Kost, 29 Ill. 490.

IMPLIED POWERS OF CITIES.—The power to erect and keep bridges in repair implies the authority to employ the means necessary and proper to the end;

IV. SUITS FOR ROAD LABOR AND TAXES.

40. Supervisors to sue in the name of the county, and may testify; appeal lies to the circuit court.

41. The forum may be that of any justice of the peace of the county.

42. The proceedings are to be instituted and prosecuted in the corporate name of the county; formality and technicality as to corporate name not essential; the record may be amended to correct it if wrongly pleaded or used.

40. It shall be the duty of the supervisors to sue in the name of the county, for all labor and taxes which shall be due from each person residing in their respective districts, and remain unpaid after notice shall have been given and a failure to settle the same, as provided in the foregoing sections; and having collected the same, shall, without delay, disburse the money to the best advantage on public roads in the district to which such labor or tax properly belongs. In all cases the supervisor shall be competent witness in such suits brought as above stated; and an appeal may be taken to the circuit court by either party, as in other cases of appeal from justices of the peace.¹

41. Supervisors are hereby authorized to bring suits before any justice of the peace of the county, to recover any and all sums due for road labor, road tax, fines and forfeitures imposed by this act, which are intended to come into the hands of such supervisors for road purposes, and to collect, disburse and account for the same, suing in the name of the county.²

42. All suits, actions and proceedings necessary to be

and the imposition of fines for a willful or negligent injury to such structures would not be an improper means of aiding to keep them in repair.

Korah v. City of Ottawa, 32 Ill. 121.

SCHOOL DIRECTOR.—Exempt from road labor, but not from road tax.

McDonald v. County of Madison, 43 Ill. 22.

NOTICE OF THE TIME AND PLACE to work out tax necessary.—But the taxpayer may waive the notice expressly, or by acts from which waiver may be inferred.—*Id.*

¹ § 40, act April 18, 1873; § 27, c. 93, *id.* See J. & C., Taxes.

² § 41, *id.*; § 39, c. 93, *id.* See J. & C., Fines, Taxes.

had on any right or cause of action, for failures to perform road labor or pay road taxes, or to enforce any contract or promise in reference to the opening or repairing of public roads, shall be had in the corporate name of the county wherein the right of action accrued: *Provided*, that no suits shall be dismissed on account of informality in the name of the plaintiff; but the court may, on application, permit the record to be so amended as to place the name of the proper plaintiff on the record.¹

V. MISCELLANEOUS PROVISIONS.

43. Road labor and taxes to be performed, and collected annually by the first Monday of December.

44. Each supervisor to make a report as prescribed, and settle with the court annually at the December term.

45. The supervisors authorized to enter on lands to make ditches, sluices, drains and water-courses; damages, how assessed and paid.

46. Teams may be employed to haul, plow and scrape, and contracts made for tools, implements and machinery by the supervisors, under the direction of the county court.

47. Penalty prescribed for nonfeasance of the supervisor.

48. The county clerk is to furnish, at each term of the circuit, a list of the names of the supervisors to the grand jury.

49. The supervisors must take good care of plows, scrapers and other tools and machinery of the county; penalty for nonfeasance.

50. One-half of the labor to be done by the tenth day of June in each year.

51. Compensation of the county clerk, surveyor, viewers and supervisors to be reasonable, and paid by allowance and the order of the county court out of the county treasury.

52. Jurisdiction over and concerning state roads conferred on county courts.

43. Every supervisor shall endeavor to collect all road and labor tax, and close the work by the first Monday in December, annually. And it shall be their duty, when such road and labor tax has been paid, either in money or labor, to write the word "paid," distinctly against each name or tract of land on his list on which the same has been paid, and such list shall be delivered to the county court, with an affidavit thereto, sworn to

¹ § 42, act April 18, 1873; Act June 22, 1852; § 2, Laws 1852, 176.

before some justice of the peace of the county, or other officer empowered by law to administer oaths, that on all tracts of land on such list opposite which the word "paid" is written, the tax is paid; and that on all tracts of land on such list opposite which the word "paid" is not written, such tax is due and remains unpaid, according to the best of his knowledge and belief.¹

Affidavit of Supervisor to his Return.

State of Illinois, }
 ——— County. } ss.

A B, being duly sworn, says, That he is Supervisor of Road District No. 1, in said county, and that on all tracts of land on the foregoing list opposite which the word "paid" is written the tax is paid; and that on all tracts of land on such list opposite which the word "paid" is not written, such tax is due and remains unpaid, according to the best of his knowledge and belief.

A B.

Subscribed and sworn to before me this day of
 A. D. 18 N. P., J. P. or ——— Clerk.

44. At the December term of the county court, annually, each supervisor shall make a report, showing the whole number of days' work that has been done in his district during the year, by whom done, the amount of money by him received, from whom received, for road tax or otherwise, due on roads, the amount paid out by him in constructing roads, with the vouchers accompanying; at which term he shall make a settlement with the court, and if a balance should appear in his hands, the same shall be disbursed in the district, or added to the general road fund, as the court shall order. Supervisors may appoint one or more persons to warn in the hands, and make an allowance out of the labor tax due from such person.²

¹ § 43, act April 18, 1873; § 28, c. 93, *id.*

² § 44, *id.*; § 28, c. 93, *id.*; § 2, act Feb. 16; Laws 1865, 111.

Supervisor's Annual Report.

To the Board of County Commissioners of the County of _____:

The undersigned, Supervisor of Road District No. _____ respectfully presents the following report of his receipts, expenditures, etc., from 18__ to 18__.

I have received	Amount.	Total.
For real estate and personal property tax* . . .		
For road tax,† as per schedule hereto attached, marked A.		
For fines and commutations,‡ as per schedule hereto attached, marked B.		
From all other sources, as follows: (<i>Set forth every item</i>).		
 Total receipts.		
Total expenditures,§ as per detailed schedule hereto attached, marked C. . .		
Balance in hand subject to your order. . .		
REMARKS.		
The whole amount of road tax assessed was.		
Less Collector's commissions.		
Errors and delinquencies on personal property tax (<i>or as the case may be</i>) as allowed by County Collector.		
Still delinquent.		

* This amount will be in detail in the tax list as returned, the names of the persons paying, and the amounts paid, respectively indicated. See § 43. *supra*, being marked "paid."

† This should be detailed in schedule A.

‡ This should be detailed in schedule B.

§ This should be detailed in a schedule or in the report.

SCHEDULE C.

Detailed statement of expenditures* by the Supervisor of Road
District No. , from 18 to 18 .

Date.	To Whom Paid.	For What Purpose.	No. of Voucher.	Amount.	Action of Board, "Ap- proved " or "Rejected."
-------	------------------	----------------------	--------------------	---------	--

I also add pursuant to the statute, the following :

Detailed statement showing the whole number of days' work
that have been done in my district during the past year, to wit :
From 18 , to 18 .

Names.	Where done.	Days' Work.
James Brown	On the Jackson road	2
Levi Brown	On the Springfield road	2
Etc.		—
Whole number of days' work		4

All which is respectfully submitted.
Dated December , A. D. 18 . A B, *Supervisor.*

45. The supervisors of the several road districts are hereby authorized to enter upon any land adjacent to any highway in their respective districts, for the purpose of opening any ditch, drain, necessary sluice or water-course, whenever it shall be necessary to open a water-course from any highway to the natural water-courses ; and to dig, open and clean ditches upon said land for the purpose of carrying off the water from said highways ; or to drain any slough or pond on said highway : *Provided*, that unless the owner of such land, or his agent, shall first consent to the cutting of such ditches, the supervisors shall apply to any justice of the peace of the county in which such road is situated, directed to any constable of said county, com-

* For every expenditure a receipt should be taken as a voucher. The vouchers of the Supervisor should be all carefully arranged and numbered, and attached to the schedule to which they respectively belong, and the whole appended to the report.

manding him to summons the said owner to appear before the said justice, at a time and place specified in such summons, not less than five nor more than fifteen days from the date thereof, for the purpose of having the damage assessed which such owner may sustain by reason of the digging or opening such ditches or drains. The said summons shall be under the hand of such justice, and be served in the same manner as summons is now served in civil actions before justices of the peace. On the return of such summons, a venire, if required by either party, shall be issued for a jury as in other cases, which jury shall assess such damages and render a verdict therefor, which shall be final and conclusive of the amount of damages sustained by such person; and the amount so awarded shall be paid out of the county treasury on the order of the commissioners. And the supervisor shall be warranted and is hereby empowered to enter such lands and dig, open and clean such drains, ditches and water-courses as aforesaid, for the purposes contemplated in this act; and is further authorized to use and employ the road labor and money of this district for such purposes: *Provided*, that in case the owner of said lands is a non-resident, service may be had by leaving a copy with the occupant or agent, or by notice in same manner as prescribed in proceedings for opening roads.¹

46. Supervisors are hereby authorized to hire teams to do the necessary hauling, plowing and scraping; to contract for materials for building bridges, causeways, erecting guide boards, for making and furnishing road scrapers, and repairing roads in discharge of labor and road tax due, and so far as funds shall come into their possession, procuring said teams, materials, implements and work, on the best possible terms; but all

¹ § 45, act April 18, 1873; Act March 9, 1867; Laws 1867, 160.

contracts made under this section, exceeding in amount ten dollars, shall be first approved or ordered by the county court: *Provided*, that nothing contained herein shall prevent the supervisors from expending, within their road districts, the road labor or money collected by them in lieu thereof.¹

47. Any supervisor who neglects to keep the roads in his district in good repair, agreeably to the provisions of this act, or fails to perform any other duty herein required, shall be liable to indictment, and on conviction thereof, shall be fined in a sum not less than five dollars and not exceeding fifty dollars, to be expended on some road within the district of said supervisor.²

48. The clerk of the county court in each county shall, at each term of the circuit court, make out and furnish the grand jury with the list of the names of all supervisors in the county, with the date at which they were appointed.³

49. It shall be the duty of the supervisors to take good care of plows, road scrapers and other implements belonging to the county, in their charge; not to lend the same, unless to the supervisor, to aid him in constructing public roads. Any person who shall violate the provisions of this section, shall forfeit and pay a fine of not less than three dollars nor more than ten dollars.⁴

50. Each and every supervisor shall call out his hands, and do a proportion, at least one-half, of the labor due, by the tenth day of June in each year, in putting the roads and bridges in good repair, and grading the same where most needed.⁵

¹ § 46, act April 18, 1873; § 29, c. 93, *id.*

² § 47, *id.*; § 40, c. 93, *id.*

³ § 48, *id.*; § 41, c. 93, *id.*

⁴ § 49, *id.*; § 5, act Feb. 17; Laws 1847, 112.

⁵ § 50, *id.*; § 6, act Feb. 17, 1847; Laws 1847, 112.

51. Sheriffs, and clerks of the county court, surveyors, viewers, and supervisors, shall be allowed a fair and reasonable compensation for discharging the duties required of them by this act, to be paid out of the county treasury on the allowance and order of the county courts.¹

52. All power, jurisdiction and control is hereby given to the county court of the several counties of and concerning state roads, located directly by the state, and all other roads, and the same shall be opened, improved and kept in repair as roads in the counties, subject to alteration, change and relocation, as hereinbefore pointed out.²

VI. THE BOARD OF COUNTY COMMISSIONERS.

53. Jurisdiction over and concerning state roads conferred on county courts; BUT AFTER THEIR ELECTION THE BOARD OF COUNTY COMMISSIONERS (Const. 1870; § 6, Art. 10) is to accede to such jurisdiction.

54. Railroad companies to be notified.

55. Notices to be served on nearest station agents.

56. Money collected under the highway act of 1872 to be expended for highways.

57. The act of April 10, 1872, and former conflicting acts, repealed.

58. Emergent.

53. The county courts of the several counties of this state shall have the supervision and control of all roads and public highways within their respective counties, and shall make such rules and regulations as may be necessary to carry this act into proper effect: "*Provided*, that after the election of the commissioners provided in section six (6), article ten (10), constitution of this state, the duties herein provided to be discharged by county courts shall devolve upon and be discharged by the 'board of county commissioners.'"³

54. In addition to the notices now required by law, in

¹ § 51, act April 18, 1873; § 42, c. 93, R. S. 489.

² § 52, *id.*; § 11, c. 93, *id.*; Laws 1851, 179.

³ § 53, *id.*; § 11, c. 93, *id.*; Laws 1851, 179; Const. 1870, art. 10, § 6; 2 Gross, 143, § 129; § 28, act April 3, 1872, Myers' Ed. Laws 1872, 436.

proceedings for locating, laying out and opening of public roads, similar notices shall be served upon any railroad company, across or alongside of whose railroad it may be proposed to locate a public road: *Provided*, that this act shall not apply to the proceedings for opening streets in towns and cities.¹

55. The notices, as required by this act, shall be served upon the station agent of any such railroad company, nearest to the proposed location of such projected public road.²

56. Any tax or moneys collected by the sheriff and county collectors of the various counties for road and bridge purposes, under the provisions of an act entitled "An act in regard to roads and bridges," approved April 10, 1872, shall be distributed to the supervisors of the various road districts from which it was collected, as near as may be, to be by them expended in improving the roads in their respective road districts.³

57. An act entitled "An act in regard to roads and bridges," approved April 10, 1872, and in force August 15, 1872, and also all other acts or parts of acts inconsistent herewith, be and the same are hereby repealed.⁴

58. Whereas by the passage of the act in regard to roads and bridges, in force August 15, 1872, hereby repealed, much confusion has arisen in carrying out and enforcing the law of this state in regard to roads and bridges, an emergency has arisen requiring this act to take immediate effect; therefore, be it enacted that this act shall take effect and be in force from and after its passage.⁵

¹ § 54, act April 18, 1873; Laws 1869, 374, § 1.

² § 55, *id.*; Laws 1869, 374, § 2.

³ § 56, *id.*; Laws 1872 (Myers' Ed.), 530-550.

⁴ § 57, *id.*; Repeal of act of 1872 (Myers' Ed.), 530.

⁵ § 58, *id.*

SECTION III.

ROADS AND BRIDGES IN COUNTIES UNDER TOWNSHIP ORGANIZATION.

- I. HIGHWAYS; THE ROAD; COMMON CARRIERS, ETC.
- II. COMMISSIONERS OF HIGHWAYS.
- III. OVERSEERS OF HIGHWAYS.
- IV. LABOR AND COMMUTATION.
- V. FINES AND PENALTIES.
- VI. HIGHWAY TAXES.
- VII. ACCOUNTS.
- VIII. SUPERVISORS.
- IX. MISCELLANEOUS PROVISIONS.
- X. REGULATIONS.
- XI. ALTERING AND VACATING ROADS, AND LAYING OUT NEW ROADS.

I. HIGHWAYS; THE ROAD; COMMON CARRIERS, ETC.

1. Roads laid out pursuant to state or territorial laws, or dedicated or used for twenty years, and not legally vacated, declared to be public highways.

2. Turn to the right, or pay a fine of five dollars for every offense, unless it be out of the beaten tract or impracticable.

3. Carriers of passengers prohibited from knowingly employing drunken drivers, under a penalty of five dollars each per day.

4. Passenger may by oath certify a case of actual drunkenness to his employer, and cause the discharge of the driver.

5. Running of horses or carriage upon any occasion prohibited, and made a misdemeanor; penalty, a fine not exceeding ten dollars, or imprisonment not exceeding sixty days.

6. Carriers of passengers to hitch or securely fasten their horses.

7. Carriers of passengers held liable for injuries.

8. "Carriage" defined — every vehicle used for the transportation of either passengers or goods.

9. City ordinances relative to hacks and carriages not affected hereby; jurisdiction of justices of the peace to two hundred dollars.

1. All roads within this state, which have been laid out in pursuance of any law of this state, or of the late territory of Illinois, or which have been established by dedication or user for twenty years, and which have not been vacated in pursuance of law, are hereby declared to be public highways.¹

2. Whenever any persons, traveling with any car-

¹ § 1. An act in regard to roads and bridges in counties under township organization, approved and in force April 11, 1873.

See Secs. I, II, *supra*, and compare pp. 8-11, *supra*, and §§ 2-9 of this act.

riages, shall meet on any turnpike road or public highway in this state, the persons so meeting shall seasonably turn their carriages to the right of the centre of the road, so as to permit each carriage to pass without interfering or interrupting, under the penalty of five dollars for every neglect or offense, to be recovered by the party injured: *Provided*, this section shall not be construed to apply to any case, unless some injury to persons or property shall occur by the driver of the carriage or wagon refusing to turn to the right of the beaten track; nor shall it be construed to extend to a case where it is impracticable, from the nature of the ground, for the driver of the carriage or wagon to turn to the right of the beaten track.¹

3. No person owning any carriage, running or traveling upon any road in this state, for the conveyance of passengers, shall employ, or continue in employment, any person to drive such carriage who is addicted to drunkenness, or the excessive use of spirituous liquors, and if any such owner shall violate the provisions of this section, after he shall have had notice and reasonable proof that such driver is addicted to drunkenness, he shall forfeit at the rate of five dollars per day for all the time during which he shall thereafter have kept any such driver in his employment.²

4. If any driver, whilst actually employed in driving any such carriage, shall be guilty of intoxication to such a degree as to endanger the safety of the passengers in the carriage, it shall be the duty of the owner of such carriage, on receiving written notice of the fact, signed by any one of said passengers, and certified by him, on oath, forthwith to discharge such driver from his employment; and every such owner who shall retain or have in his employ, within three months after

¹ § 2, act April 11, 1873. ² § 3, *id.*

the receipt of such notice, any driver who shall have been so intoxicated, shall forfeit at the rate of five dollars per day for the time during which he shall keep any such driver in his employment after receiving such notice.¹

5. No person driving any carriage upon any turnpike road or public highway within this state, with or without passengers therein, shall run his horses or carriage (or permit the same to run) upon any occasion, or for any purpose whatever; and every person who shall offend against the provisions of this section, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined not exceeding ten dollars, or imprisoned not exceeding sixty days, at the discretion of the court.²

6. It shall not be lawful for the driver of any carriage used for the purpose of conveying passengers for hire, to leave the horses attached thereto while passengers remain therein without first making such horses fast with a sufficient halter, rope or chain, or by placing the lines in the hands of some other person, so as to prevent their running; and if any such driver shall offend against the provisions of this section, he shall forfeit the sum of twenty dollars, to be recovered by action, to be commenced within six months; and unless the amount of such recovery be paid forthwith, execution shall be immediately issued therefor.³

7. The owners of every carriage running upon any turnpike road or public highway, for the conveyance of passengers, shall be liable, jointly and severally, to the party injured, in all cases, for all injuries and damages done by any person in the employment of such owners as a driver, while driving such carriage, to any person, or to the property of any person; and that,

¹ § 4, act April 11, 1873. ² § 5, *id.* ³ § 6, *id.*

whenever the act occasioning such injury or damage be willful, negligent or otherwise, in the same manner that such driver would be liable. Any driver of any mail stage coach, or any other vehicle for the conveyance of passengers, willfully offending against the provisions of this act, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be imprisoned not exceeding four months, or fined not exceeding three hundred dollars.¹

8. The term "carriage," as used in this act, shall be construed to include stage coaches, wagons, carts, sleighs, sleds and every other carriage or vehicle used for the transportation of passengers and goods, or either of them.²

9. Nothing contained in this act shall interfere with or affect any law concerning hackney coaches or carriages

¹ § 7, act April 11, 1873.

² § 8, *id.*

§§ 1 to 8 are almost identical with the New York Statute.

1 R. S. N. Y. 695 ; §§ 1 to 8.

The proviso of § 1 of our law is not in the N. Y. law, but it is substantially the result of litigation in New York, as the following cases abundantly attest:

The law of the road. See pp. 6 to 8, *supra* ; see 1 R. S. N. Y. 695, § 1.

"Seasonably turn to the right"—that is, shall turn in time not to retard the progress of the other. *Brooks v. Hart*, 14 N. H. 307.

On the wrong side, the person who is, assumes the risk of all experiments, and is bound to use greater care than if on the right side.—*Id.*

He may excuse himself by showing that he was drawing up to his stopping place, or to water his horse, or to turn out of the road.

Burdick v. Worrall, 4 Barb. 596.

The roughness of the road on the right side is no excuse, unless so great as to present a serious obstacle to its use.

Earing v. Lansing, 7 Wend. 185.

"Center of the road" means the center of the worked part of the road, not the *smooth* or most traveled part, though the whole of the most traveled part be on the one side.—*Id.*

When the rule does not apply.—The law requiring parties to turn to the right does not apply when they meet on a street railway. Whichever side is the safest may be taken.

Hegan v. Eighth Av. R. R. Co., 15 N. Y. 380.

It does not apply to foot passengers.

Dudley v. Bolles, 24 Wend. 465; *Grant v. City of Brooklyn*, 41 *id.* 384.

Nor to those traveling in the same direction.

A foot passenger may walk in the wagon way, though there be a good

in any of the cities of this state, nor interfere with nor affect the laws or ordinances of any such city for the licensing or regulating such coaches or carriages. Justices of the peace shall have jurisdiction in all cases arising under this act, where the penalty does not exceed their jurisdiction.¹

II. COMMISSIONERS OF HIGHWAYS.

10. To have the care and superintendence of highways and bridges. Their duties specified:

1. To direct repairs of highways, and cause bridges to be built.
2. To lay out, regulate, alter or vacate roads.
3. To have highways sufficiently described of record, in the town clerk's office.
4. To see that highways and bridges are kept in repair.
5. To divide their town into road districts according to law.
6. To apportion the inhabitants to such districts.
7. To cause the overseers of highways to warn persons to work on highways, but not allow landmarks to be disturbed.
8. To take care of the tools, implements and machinery of highway labor belonging to their town.
9. To purchase the necessary tools, implements and machinery for such work.
10. To erect and keep in repair at forks and crossings, finger or guide boards: extirpate thistles and other noxious weeds; dig and keep wells; make watering places for teams at convenient points, etc.
11. Their first meeting; treasurer to be chosen from their number; his duties; to give bond and file the same.
12. To render a detailed account to the board of town auditors.
13. First meeting of the commissioners to take place according to mutual agreement, at the town clerk's office, within ten days after they are chosen; other meetings to be held as they may think proper.
14. Town clerk to furnish lists filed by the overseers, upon which highway labor and road tax are to be ascertained, estimated and assessed.
15. Able-bodied male inhabitants, of the age of twenty-one years and upwards to fifty years, to labor on the highways not less than one nor more than three days in each year.

sidewalk; but he must use due care, and he is entitled to exercise of reasonable care from the persons driving on the road.

Coombs v. Parrington, 42 Me. 332.

The horse must be properly managed; ordinary care must be used.

Clafin v. Wilcox, 18 Vt. 605; *Center v. Finney*, 17 Barb. 94.

The horse must not be vicious.

Sullivan v. Scripture, 3 Allen 564.

The harness must be good, and the carriage road worthy.

Smith v. Smith, 2 Peck 621.

¹ § 9, act April 11, 1873.

16. Road taxes to be assessed on real and personal property.
17. Tax lists, how to be made and filed.
18. Copies to be made, authenticated and delivered to the overseers respectively.
19. Omissions to be supplied and additions made by the overseers.
20. Private roads may be annexed to highways, and work done thereon credited to those who perform it.
21. Notice of the amount of road tax assessed to be posted on town house door, within ten days after the assessment.
22. Penalties for non-feasance or mis-feasance prescribed.

10. The commissioners of highways in the several towns in this state shall have the care and superintendence of highways and bridges therein, and it shall be their duty :

First — To give directions for the repairing of roads and bridges in their respective towns, and to cause the building of bridges when the public interests or necessity require it.¹

Second — To lay out and establish roads, to regulate the roads already laid out, and to alter or vacate such roads, as they or a majority of them shall deem proper, as hereinafter provided.²

Third — To cause such roads used as highways as have been laid out, or dedicated to public use, but not sufficiently described, and such as have been used for twenty years, but not recorded, to be ascertained, described and entered of record in the town clerk's office.³

Fourth — To cause the highways and bridges which are or may be erected over streams intersecting highways, to be kept in repair.⁴

¹ § 10, act April 11, 1873; *Bartlett v. Crozier*, 17 Johns. 452; see § 69, *infra*.

² § 10, *id.*; *Colden v. Thurber*, 2 Johns. 424; *Talmage v. Hunting*, 29 N. Y. 447; *Davenport v. Lambert*, 44 Barb. 596.

³ § 10, *id.*; *Walker v. Caywood*, 31 N. Y. 51; *People v. Judges of Cortlandt County*, 24 Wend. 491.

⁴ § 10, *id.*; *Bartlett v. Crozier*, 17 Johns. 449; *Hyatt v. Trustees of Rondont*, 44 Barb. 391; *Dygert v. Schenck*, 23 Wend. 446; *Ireland v. Oswego etc. Plank Road Co.*, 13 N. Y. 531; *People v. Comm'rs of Hudson*, 7 Wend. 474; *Garlinghouse v. Jacobs*, 29 N. Y. 303; *Barker v. Loomis*, 6 Hill 619.

Organized townships, established by law as civil divisions of counties

ORDER ASCERTAINING AND DESCRIBING ROAD.

Whereas a road, used as a highway in the town of _____ in the County of _____, leading from the _____ was laid out by the Commissioners of Highways of the said town, on the tenth day of June, 1850, but not sufficiently described: (*or has been used as a public highway for twenty years last past, but not recorded.*)

Now, therefore, we, the undersigned, Commissioners of said town, having met at the house of _____, in said town, for the purpose of causing said road to be ascertained, described and entered of record in the Town Clérk's office, all the said Commissioners being present, and having deliberated (*or all the said Commissioners having been duly notified to attend this meeting for the purpose of deliberating*) on the subject embraced in this order, do hereby order that the said road be ascertained, described and entered of record. And the said Commissioners, having caused a survey of the said road to be made, do further order that said road is hereby ascertained and described according to the said survey, being as follows: Beginning at (*insert survey*).^{*} And it is further ordered that the line above described be the *centre* line of the said road, and that the said road be of the width of _____ rods.

In witness whereof, the said Commissioners have hereunto subscribed their names the _____ day of _____, 18 ____.

_____,
_____,
_____,
Commissioners of Highways.

Fifth—To divide their respective towns into so many road districts as they shall deem convenient, by writing, under their hands, to be lodged with the town clerk, and by him to be entered in the town book. Such division to be made annually, if they shall think

merely, are not liable, in their corporate capacity, to a private action for damages occasioned by their neglect to keep their public highways in repair. *Bussell v. The Town of Steuben*, 57 Ill. 35; see also *The Town of Waltham v. Kemper*, 55 Ill. 346.

It was decided in the case of *White, Adm'r. v. The County of Bond*, 58 Ill., that a county was not liable, in its corporate capacity, to a private action for injury resulting from a defective highway.

The Commissioners in New York are not liable at the suit of an individual

^{*} See *Tower v. Pitstick*, 55 Ill. 117.

it necessary; and in all cases to be made at least ten days before the annual town meeting.¹

ORDER DIVIDING TOWN INTO ROAD DISTRICTS.

The undersigned, Commissioners of Highways of the town of _____, in the County of _____, having met and deliberated on the subject embraced in this order, all said Commissioners being present, and having deliberated thereon (*or all said Commissioners having been duly notified to attend here for the purpose of deliberating thereon*), do hereby order that the said town be and the same is hereby divided into *ten* road districts, as follows, to wit:

District No. 1 shall comprise all that part of the said town lying north of the south line of the road leading from the dwelling-house of * _____ to the east line of said town, and all the inhabitants residing in said district, and all those residing on the said road above mentioned, liable to work on highways, are hereby assigned to work in said district No. 1. (*If any out of said district be assigned to work therein, insert.*) And the following inhabitants, residing out of said district, are hereby assigned and required to work therein, to wit: J C, etc., and all persons

who has sustained an injury by reason of their neglect to keep the highways and bridges in a proper state of repair.

Bartlett v. Crozier, 17 Johns. 437; *West v. Trustees of Broekport*, 16 N. Y. 161; *Hickok v. Trustees of Plattsburgh*, 16 N. Y. 161; *per contra*, *Adsit v. Brady*, 4 Hill 630; *Smith v. Wright*, 24 Barb. 170; *Robinson v. Chamberlain*, 34 N. Y. 380.

They may, however, be indicted for such neglect.

People v. Corporation of Albany, 11 Wend. 539; *Garlinghouse v. Jacobs*, 29 N. Y. 305; *Wilson v. Mayor of N. Y.*, 1 Denio 599.

A town is in no event liable to a civil action for injuries sustained through the negligence of its officers to keep the highways in repair.

Morey v. Newfane, 8 Barb. 645; *Town of Galen v. Clyde*, 27 *id.* 543.

But incorporated cities and villages are liable.

Conrad v. Trustees of Ithaca, 16 N. Y. 158; *Hickok v. Trustees of Plattsburgh*, 16 N. Y. 161; *Wendell v. Mayor of Troy*, 39 Barb. 329; *Hyatt v. Trustees of Rondout* 44 *id.* 385.

¹ § 10, act April 11, 1873.

The order dividing the town into road districts must be made upon a meeting and conference of all the commissioners, though the signature of two will be sufficient. Where two only sign, however, the order should state that it had been made upon a meeting and conference of all the commissioners, or that the third had been duly notified to attend, for the particular purpose of making a division of the town.

1 New York R. S. § 125; *People v. Williams*, 36 N. Y. R. 441.

* It were better, perhaps, to divide according to the U. S. land survey.

residing with them on their farms, and liable to work on highways, are assigned to the said district No. 1.

District No. 2, etc. (*proceed in like manner till all are described.*)

In witness whereof, we have hereto subscribed our names this day of April, 1870.

_____,
_____,

Commissioners of Highways.

Sixth — To assign to each of the said road districts such of the inhabitants liable to work on highways as they shall think proper, having regard to proximity of residence as much as may be.

Seventh — To require the overseers of highways, from time to time, and as often as they shall deem necessary, to warn all persons to work on highways to come and work thereon, with such implements, carriages, plows and teams as they may have; and the said commissioners, or any of them, shall direct and see that persons working or repairing the highways leave undisturbed all stones or other monuments marking sectional or other corners, which may be in the public roads worked or repaired by them.

Eighth — To take possession of and keep all scrapers, plows, and other tools belonging to their town, wherever the same may be found, and not allow the same to go to waste, and not to lend the same, except to persons employed by them to work on the roads by contract or otherwise.

Ninth — To purchase for use upon highways such necessary tools, implements and machinery as may be necessary.

Tenth — To cause to be erected and kept in repair, at the forks or crossing place of the most important public roads, a post and guide boards, with plain inscriptions thereon in letters and figures, giving directions and distances to the most noted places to

which such road may lead; to prevent thistles, burdock, cockle-burs, mustard, yellow dock, Indian mallow and jimson weed from seeding, and to extirpate the same so far as practicable, and to prevent all rank growth of vegetation in the public highway, so far as the same may obstruct public travel; and the said highway commissioners may, in their discretion, sink and construct wells, with a suitable pump or other suitable fixture, and a water-trough attached thereto, and keep the same in repair, for public use for watering teams, at the intersection of the most important roads in their towns or road districts; and they may also adopt any other suitable and convenient mode of supplying the water in troughs conveniently situated on the public highways for public use, at other points than at such intersections; and the cost of such improvements shall be paid out of the road and bridge funds of such town.¹

- 11. At the first meeting of the commissioners of highways, after they shall have been duly elected and qualified, they shall proceed to choose one of their number as treasurer. The treasurer so chosen shall receive and have charge of all moneys raised in the town for the support and maintenance of roads and bridges. He shall hold such moneys, at all times, subject to the order of the commissioner of highways, and shall pay them over upon their order, or a majority of said commissioners, and not otherwise. He shall execute bond, with good and sufficient security, in such manner as the supervisor and town clerk shall determine, conditioned for the faithful discharge of his duties as such treasurer, and that he will honestly and faithfully account for and pay over upon the order of the commissioner of highways, all moneys that shall come to his hands by virtue of his said office; which

¹ § 10, act April 11, 1873.

bond shall be payable to the supervisor of the town and his successor in office, and be approved by the supervisor and town clerk, and filed in the town clerk's office.¹

Bond of Treasurer of Commissioners of Highways.

Know all men by these presents, That we,
of _____ in the County of _____ and State of Illinois,
as principal, and
of the County and State aforesaid, as sureties, are held and firmly
bound unto A B, the supervisor, and his successor in office, of and
for the use of the town of _____ in said County, in the penal
sum of _____ dollars, for the payment of which, well and
truly to be made, we bind ourselves, our heirs, executors and
administrators, jointly and severally, firmly by these presents.

Signed with our hands and sealed with our seals, this
day of _____ 18 .

The condition of the above obligation is such, That whereas,
the above bounden _____ was, on the
day of _____ 18 , duly chosen Treasurer of the Board of
Commissioners of Highways of the said town of _____
for the current year, has accepted the office, and is about to enter
upon the performance of its duties:

Now, therefore, if the said _____ shall faithfully
discharge his duties as such Treasurer, and shall honestly and
faithfully account for and pay over, upon the order of the Com-
missioners of Highways of said town, all moneys that shall come
into his hands by virtue of his said office, then the above obliga-
tion to be void; otherwise to remain in full force and virtue.

Signed, sealed and delivered in presence of

_____	_____ [SEAL.]
_____	_____ [SEAL.]
_____	_____ [SEAL.]

¹ § 11, act April 11, 1873.

The securities to the bond of a commissioner will be liable only for a dereliction in duty during the term for which the commissioner was chosen at the time the obligation was entered into, and not for those which happen under his reappointment.

Kingston Mut. Ins. Co. v. Clark, 33 Barb. 196.

In case of default on the part of the commissioner, in N. Y. the bond is to be prosecuted by the supervisor of the town.

Jansen v. Ostrander, 1 Cow. 670; Fuller v. Fullerton, 14 Barb. 59.

The above bond of _____ Treasurer of the Commissioners of Highways of the town of _____ in the County of _____ and State of Illinois, approved by me this _____ day of _____ A. D. 18 _____.
 _____, *Supervisor.*

[Indorsement.]

Bond of Treasurer of Commissioners of Highways.

Treasurer of Commissioners of Highways of the town of _____
 Securities.

Approved and filed this _____ day of _____ 18 ___, in the office of the Town Clerk of the town of _____
 _____, *Town Clerk.*

12. The commissioners of highways of each town shall render to the board of town auditors, at their annual meeting for auditing the accounts of town officers, an account in writing, stating:

First—The labor assessed and performed in such towns.

Second—The sums received by such commissioners for fines and commutations, and all other moneys received under this act.

Third—A statement of the improvements necessary to be made on such roads and bridges, and an estimate of the probable expense of making such improvement, beyond what the labor to be assessed in that year and the road tax will accomplish.

Fourth—Also, a statement, in writing, of all expenses and damages in consequence of laying out, altering or discontinuing roads.

Fifth—Also, a statement of the amount received from the collector of the town, or from any other source, up to the time of such statement, and the manner in which the same, if any sum, has been paid out and expended, to whom, and on what account.¹

¹ § 12, act April 11, 1873.

COMMISSIONERS' ANNUAL ACCOUNT.

The undersigned, Commissioners of Highways of the town of _____, in the County of _____, hereby render to the Board of Auditors of said town their annual account for the year ending _____

1. The highway labor assessed in said town for the year ending on the said _____ day of _____ was *eight hundred and ten* days, and the highway labor performed in said town during the said year was *seven hundred and eighty-nine* days, as appears by the accounts rendered us by the several Overseers of Highways in said town.

2. The said Commissioners have received, during the said year, the following sums of money for fines and commutations under the statute relative to highways, to wit :

Date.	From whom received.	On what account.	Amount.
-------	---------------------	------------------	---------

3. The following improvements are necessary to be made on the roads and bridges in said town, to wit: (*specify necessary improvements.*) The probable expense of making such improvements, beyond what the labor to be assessed and the road tax this year will accomplish, is by us estimated at _____ dollars.

4. The improvements which have been made on and the expenses and damages for the roads and bridges in said town, during said year, are (*specify their cost etc.*) And the roads and bridges in said town are (*in good repair or otherwise.*)

5. They have also received from the collector of the town and other sources under said statute, etc.

Given under our hands this _____ day of _____ 18 .

_____,
_____,

Commissioners of Highways.

13. The commissioners of highways of each town shall meet, within ten days after they shall be chosen, at the town clerk's office, on such day as they shall agree upon, and afterwards at such other times and places as they shall think proper.¹

¹ § 13, act April 11, 1873.

An order made by two commissioners where there are three in office must show *on its face* either that the third commissioner met with his asso-

14. The town clerk shall deliver the lists filed by the overseers, to the commissioners of highways of the town, who shall proceed to ascertain, estimate and assess the highway labor and road tax to be performed and paid in their town the next ensuing year.¹

15. Every able-bodied male inhabitant, being above the age of twenty-one years and under the age of fifty (excepting paupers, idiots, lunatics, and such others as are exempt by law), shall be required to labor on the highways in their respective road districts, not less than one nor more than three days in each and every year.²

ASSESSMENT OF HIGHWAY LABOR.

The undersigned, Commissioners of Highways of the town of _____, in the County of _____, having met at _____, in said town, for the purpose of ascertaining, estimating and assessing the highway labor to be performed in said town the ensuing year; all the Commissioners being present and having deliberated thereon (*or all the Commissioners having been duly notified to be present at this said meeting, for the purpose of deliberating thereon*), do hereby ascertain, estimate and assess such labor as follows:

1. The whole number of days' work assessed for the year is *twelve hundred*, being at least three times the number of taxable inhabitants in said town.

2. Every male inhabitant above the age of twenty-one years and under the age of fifty years (*excepting paupers, idiots, lunatics, etc.*), there being *four hundred and fifty-three*, is assessed three days (*or two days, etc.*)

And on the real estate and personal property liable to taxation in said town we do hereby assess a road tax of *fifteen* cents on each one hundred dollars' worth, as valued on the roll for the last year.

In witness whereof, we have hereto set our hands this _____ day of _____, 18 ____.

Commissioners of Highways.

ciates and participated in their deliberations, even if he did not concur in their conclusions, or that he was notified not only of the intended meeting, but of the particular subject on which it was proposed to deliberate.

People v. Williams, 36 N. Y. 441.

¹ § 14, act April 11, 1873. ² § 15, *id.*

Poll Tax Road List.

State of Illinois, { To Overseer
 — County. } ss. of Highways for District No.
in the town of in said County, for the year 18 .

Below is a list of the names of the persons residing in your district who are liable to be assessed for highway labor in the town aforesaid, for the year 18 , together with the number of days set opposite their names which each person has been assessed for highway labor for said year.

Names.	Days.	Names.	Days.
--------	-------	--------	-------

Given under our hands and seals, at the town of
this day of A. D. 18 .
 — ———, [SEAL.] Commissioners
 — ———, [SEAL.] of
 — ———, [SEAL.] Highways.

[Indorsement.]
Poll Tax Road List.

Road District No. — ———, Overseer.
Filed in the office of the Town Clerk of the town of on the
 day of 18 .
 — ———, Town Clerk.

16. The commissioners of highways shall assess a road tax on all real estate and personal property liable to taxation of the town, to any amount they may deem necessary, not exceeding forty cents on each one hundred dollars' worth, as valued on the assessment roll of the previous year: *Provided*, that the tax on property lying within any incorporated village, town or city, in which the streets and alleys are under the care of the corporation, shall be paid over to the treasurer of such village, town or city, to be appropriated to the improvement of roads, streets and bridges, under the direction of the corporate authorities.¹

17. The commissioners of highways shall affix to the name of each person named in the lists so fur-

¹ § 16, act April 11, 1873.

nished by the overseers, the number of days assessed to each person for highway labor, personal property, and also a description of each tract of land, and the name of the owner; if known, with the valuation thereof, as taken from the assessment roll of the previous year, and the amount of road tax assessed thereon, in a separate column. The lists so prepared shall be subscribed by the commissioners, and deposited with the town clerk, to be filed in his office.¹

Land and Personal Road Tax List—For Commissioners to Deposit with Town Clerk.

_____ County, }
Town of _____ } ss.
We, the undersigned, Commissioners of Highways of the said town of _____ having proceeded to ascertain, estimate and assess the highway labor and road tax to be performed and paid in said town the ensuing year, have made out the estimate and assessment of the lands sitnated in Road District No. _____, in said town, with the names of the owners, so far as known to us, for road tax, as valued on the assessment roll of last year, to wit, A. D. 18 _____, as follows:

Names of Owners.	Descrip-tion.	S.	T.	R.	A.	Value per Acre.	Total Value	Tax		No. of days if paid in Labor.	Value Per. Prop.	Tax on Per. Prop.		No. of days if paid in Labor.	Paid.
								Dol.	cts.			Dol.	cts.		

And we direct the Clerk of the town of _____ to make a copy of the foregoing list.
Given under our hands and seals, at the town of _____ this _____ day of _____ A. D. 18 _____.
_____,
_____,
_____,
Commissioners of Highways.

[Indorsement.]
Land and Personal Road Tax List—For Commissioners to Deposit with Town Clerk.
Road District No. _____ in the town of _____
_____, Overseer.
State of Illinois, }
_____ County. } ss.
Filed in the Clerk's office of the town of _____ on the _____ day of _____ 18 _____.
_____, Clerk.

¹ § 17, act April 11, 1873.

18. The commissioners shall direct the clerk of the town to make a copy of each list, and shall subscribe such copies, after which they shall cause the several copies to be delivered to the respective overseers of highways of the several districts in which the highway labor is assessed. One copy for each overseer shall contain the name and number of days assessed to each person, the other the real and personal property road tax.¹

The town clerk will make a true copy of each list and add *certificate* to each, viz.:

The foregoing is a true and accurate copy of assessment of road tax filed in the office of the Clerk of the town of _____ by the Commissioners thereof, *except their signatures, which are original*, on the _____ day of _____ 18 .
_____, Town Clerk.

[Indorsement.]

Land and Personal Road Tax List—Town Clerk's Copy to Return to Overseer.

Road District No. _____ in the town of _____, Overseer.

State of Illinois, } ss.
_____ County.

Filed in the Clerk's office of the County of _____ on the _____ day of _____ 18 .
_____, Clerk.

19. It shall be the duty of the overseers to add the names of persons left out of any such list, and of new inhabitants, and to rate the persons so added in the same proportion to work on the highways as others rated by the commissioners on such list, subject to an appeal to the commissioners.²

OVERSEERS' ASSESSMENT OF PERSONS OMITTED.

The following named persons having been left out of the list of persons assessed to work on the highways in Road District No. _____, in the town of _____, in the County of _____, (or having become inhabitants of Road District No. _____, in the town of _____, in the County of _____

¹ § 18, act April 11, 1873. ² § 19, *id.*

, since the list of assessment of highway labor for said district was made).

Now, therefore, I, _____, Overseer of Highways of said district, according to the statute in such case made and provided, do hereby assess and rate the said persons in proportion to their real and personal estate, to work on the highways, as others are rated by the Commissioners on such list, subject to an appeal to the Commissioners, which said assessment is as follows, viz.:

Names.	No. of days.
George Brownell.....	—
James Kinnear.....	—

In witness whereof I have hereto set my hand this
day of _____, 18 .

_____, Overseer.

Appeal to Commissioners from Assessment of Overseers.

To the Commissioners of Highways of the town of _____, in the
county of _____:

The undersigned having been assessed by the Overseer of Road District No. _____, in said town, _____ days' labor on the highway, on the ground that he is a new inhabitant of said district (or that his name has been omitted by the Commissioners in said town), and conceiving himself aggrieved by said assessment, does hereby appeal from said assessment so made by said Overseer to the Commissioners of Highways of said town.

Dated at _____ this _____ day of _____ 18 .

20. It shall be the duty of commissioners of highways of each town to credit such persons as live on private roads and work the same so much on account of their assessment as such commissioners shall deem necessary to work such private road, or to annex such private road to some of the highway districts.¹

21. The town clerk shall, within ten days after the commissioners of highways have filed in his office the amount of road tax assessed on the real and personal estate of the towns, post a notice on the outer door of the house where the town meeting was last held,

¹ § 20, act April 11, 1873.

stating the amount of road tax assessed on each one hundred dollars' worth of the real and personal estate of the town, and that all persons interested can pay the same in labor on the highways, under the direction of the overseer of highways, in the district where the land or personal property is situated.¹

Highway Tax — Notice.

Notice is hereby given, that *fifteen* cents of road tax for the year ending _____, A. D. 18 __, has been by the Commissioners of Highways of the town of _____ in the County of _____, and State of Illinois, assessed on each one hundred dollars' worth of real and personal estate of said town, and that all persons interested can pay the same in labor on the highways, under the direction of the Overseer of Highways, in the district where the land or personal property is situated.

Town Clerk's office,

A. D. 18 __.
— ———, *Town Clerk.*

22. If the commissioners of highways shall refuse or neglect to perform any of the duties enjoined on them by this act, they shall severally forfeit not less than ten dollars nor more than fifty dollars, and may be proceeded against, severally or jointly, for the recovery of such forfeiture before any justice of the peace in the proper county having jurisdiction.²

III. OVERSEERS OF HIGHWAYS.

23. To be elected at the annual town meeting, one for each road district, to hold office for the year.

24. Duties of each of the overseers of highways specified:

1. He is to keep the highways in his district in order.
2. To warn persons from whom road labor is due to perform it; see that it is performed, and if in time, receipt therefor.
3. To collect fines and commutation money, and execute the lawful orders of the commissioners of highways.
4. To deliver a poll list within sixteen days after his election to the town clerk.

25. Failure or refusal to serve to vacate the office which by warrant the commissioners are to fill.

26. Warrant to be filed and town clerk to give notice of his appointment to the appointed.

27. Penalties for non-feasance or misfeasance prescribed.

¹ § 21, act April 11, 1873. ² § 22, *id.*

23. There shall be chosen, at the annual town meeting in each town, as many overseers of highways as there are road districts in the town; and each overseer of highways, so chosen, shall be a resident of the road district for which he is elected, and shall hold his office for one year: *Provided*, there shall be chosen at the annual town meeting in April, 1873, one overseer of highways for each road district, as constituted previous to the passage of an act entitled "Roads and Bridges," approved April 10, 1872.¹

ORDER FILLING VACANCY IN THE OFFICE OF COMMISSIONER OF HIGHWAYS.

County of _____, } ss. (Township Organization.)
Town of _____. }

Whereas a vacancy has occurred in the office of Commissioners of the town of _____, by reason of the death (*or as the case may be*) of _____, heretofore elected to said office from said town;

Now, therefore, by virtue of the power vested in us by the statute in such case made and provided, we, the undersigned, _____ of said town, in order to fill said vacancy, do hereby appoint _____ Commissioner of Highways of said town, to hold said office until the next succeeding annual town meeting of said town, as provided by law.

In witness whereof we have hereunto set our hands this day of _____ 18 ____.

Official Oath.

State of Illinois, }
_____ County. } ss.

I, _____, having been elected to the office of _____ in the town of _____ in the County of _____ aforesaid, do solemnly swear, that I will support the Constitution of the United States, and the Constitution of the State of Illinois, and that I will faithfully discharge the duties of my said office, according to the best of my ability.

Subscribed and sworn to before me, this _____ day of _____
A. D. 18 ____.

¹ § 23, act April 11, 1873

[Indorsement.]

Official Oath of

Elected 18 , to the office of

Filed this day of 18 , in the office of the town
Clerk of the town of ———, *Town Clerk.*

24. It shall be the duty of overseers of highways in each town :

First—To repair and keep in order the highways within their several districts for which they shall have been elected.

Second—To warn all persons from whom road labor is due to work on the highways, at such times and places, within their several districts, as they may think proper. The overseers of highways may contract with persons owing poll tax for road purposes, to perform a certain amount of labor on any road or bridge in their town or road district for the amount of such tax ; and if the work is done within the time that the money should have been paid, the overseer shall give such person a receipt for such labor done or performed.

Third—To collect all fines and commutation money, and to execute all lawful orders of the commissioners of highways.

Fourth—To deliver to the clerk of the town, within sixteen days after their election or appointment, a list subscribed by such overseers, of the names of all the inhabitants in his road district who are liable to work on highways.¹

¹ § 24, act April 11, 1873

Overseer's List of Inhabitants Liable to Work on the Highways.

Overseer's list of inhabitants liable to work on the highways in
district No. _____ in the town of _____

_____ County, }
Town of _____ } ss.

I, _____ Overseer of Highways for Road District No. _____
, in said town of _____, do hereby cer-
tify that the following is a true and correct list of all the inhabit-
ants in said road district, who are liable to work on the highways,
viz.:

Names:

Dated at _____ this _____ day of _____ 18 ____ .
_____, *Overseer.*

[Indorsement.]

Overseer's List.

Road District No. _____

Filed in the Clerk's office of the town of _____ on the _____
day of _____ 18 ____ .
_____, *Town Clerk.*

25. If any person chosen or appointed to the office of overseer of highways, shall refuse to serve, or if his office shall become vacant, the commissioners of the highways of the town shall, by warrant, under their hands, appoint some other person in his stead; and the overseer so appointed shall have the same powers, be subject to the same orders, and liable to the same penalties, as overseers chosen at the town meeting.¹

APPOINTMENT OF OVERSEER IN CASE OF VACANCY.

Town of _____, }
County of _____ } ss.

Whereas, a vacancy has occurred in the office of Overseer of Highways for Road District No. _____, in said town, by reason of the refusal to serve (*or as the case may be*) of A B.

Now, therefore, by virtue of the power vested in us by the statute in such case made and provided, we, the undersigned, Commissioners of Highways of said town, having met and deliberated on the subject embraced in this warrant (*where only two*

¹ § 25, act April 11, 1873.

sign, add all the Commissioners of Highways of said town having met and deliberated, or all the Commissioners, etc., having been duly notified to attend this meeting of the Commissioners for the purpose of deliberating on the subject embodied in this warrant), do hereby, in order to fill said vacancy, appoint Overseer of Highways, of and for said road district No. in said town.

In witness whereof, we have hereto placed our hands this
day of _____, 18 . _____*

26. The commissioners making the appointment shall cause such warrant to be forthwith filed in the office of the town clerk, who shall give notice to the person appointed, as in other cases.¹

27. Every overseer of highways who shall refuse or neglect to perform any of the duties hereinbefore enumerated, or which may be lawfully enjoined on him by the commissioners of highways of his town, shall, for every such refusal or neglect, forfeit the sum of ten dollars, to be sued for by the commissioners of highways of the town, and when recovered, to be applied by them in making and improving the roads and bridges therein.²

¹ § 26, act April 11, 1873.

² § 27, *id.*

In New York these duties are to be performed upon the order of the commissioners, and no overseer is liable for a neglect of them without such order.

McFadden v. Kingsbury, 11 Wend. 667.

But an overseer is liable for not removing obstructions in the highway, although not specially required by the commissioners. — *Id.*

* This must be indorsed and filed. (§ 26.)

IV. LABOR AND COMMUTATION.

28. Overseer to give three days' notice to person assessed to work on the highways.

29. The person notified required to work, or to commute by paying one dollar and fifty cents *per diem*.

30. Commutation money to be paid within three days after notice served.

31. Impressment of teams for such labor.

32. Substitute may perform the labor, under restrictions.

33. Idlers, the unfaithful and hinderers declared offenders and liable to be fined.

28. It shall be the duty of overseers of highways to give at least three days' notice to all persons assessed to work on highways, and residing within the limits of their respective districts, of the time and place when and where they are to appear for that purpose, and with what implements; but no person, being a resident of the town, shall be required to work on any highway other than in the district in which he resides, except he resides in a district on a town line, which district belongs to an opposite town, and unless he shall elect to work in some district where he has any land; and in such case he may, with the approbation of the commissioners of highways, apply the work assessed in respect to such land in the district in which the same is situated.¹

29. Every person liable to work on the highways shall work the whole number of days for which he shall have been assessed; but every such person, other than an overseer of highways, may elect to commute for the same, or for any part thereof, at the rate of one dollar and fifty cents per day; in which case such commutation money shall be paid to the overseer of highways of the district in which the person commuting shall reside, to be applied and expended by such overseer in the improvement of the roads and bridges in the same district.²

30. Any person intending to commute for his

¹ § 28, act April 11, 1873. ² § 29, *id.*

assessment, or any part thereof, shall, within three days after he shall be notified to appear and work on the highways, pay the commutation money for the work required of him by such notice; and the commutation shall not be considered as complete until such money be paid.¹

31. Every overseer of highways shall have power to require a team or a cart, wagon or plow, with a pair of horses or oxen, and a man to manage them, from any person having the same within his district, who shall have been assessed two days or more, and who shall not have commuted for his assessment; and the person furnishing the same, upon such requisition, shall be entitled to a credit of two days for each day's service therewith.²

32. Every person assessed to work on the highways, and named to work, may appear in person, or by an able-bodied man as a substitute, and the person or substitute shall actually work eight hours in each day, under a penalty of twenty-five cents for every hour such person or substitute shall be in default, to be imposed as a fine on the person assessed.³

33. If any person, after appearing, remain idle, or not work faithfully, or hinder others from working, such offender shall, for every offense, forfeit to the town the sum of two dollars.⁴

V. FINES AND PENALTIES.

34. Fines and penalties prescribed.

35. Proceedure, complaint to be made by the overseer to a justice of the peace.

36. Justice to issue a summons.

37. The hearing, judgment and execution.

38. Constable to collect, and pay over to the justice.

39. Every collected fine a set-off for one day's labor; two dollars equal to one day's work.

40. Excuses of no avail; exemption from labor or commutation by the overseer, disallowed.

¹ § 30, act April 11, 1873. ² § 31, *id.* ³ § 32, *id.* ⁴ § 33, *id.*

34. Every person so assessed and duly notified, who shall not commute, and who shall refuse or neglect to appear, as above provided, shall forfeit to the town, for every day's refusal or neglect, the sum of two dollars. If he be required to furnish a team, carriage, man or implement, and shall refuse or neglect to comply, he shall be fined as follows :

First — For wholly failing to comply with such requisition, four dollars for each day.

Second — For omitting to furnish a pair of horses or oxen, one dollar and fifty cents for each day.

Third — For omitting to furnish a man to manage the team, two dollars for each day.

Fourth — For omitting to furnish a wagon, cart or plow, seventy-five cents for each day.¹

35. It shall be the duty of every overseer of highways, within six days after any person assessed and notified shall be guilty of any refusal or neglect, for which a penalty or fine is prescribed in this act, unless a satisfactory excuse shall be rendered to him for such refusal or neglect, to make complaint, on oath, to any justice of the peace of the county.²

OVERSEER'S COMPLAINT FOR REFUSAL TO WORK, ETC.

State of Illinois, } ss. Before Justice of the Peace of
 — County. } said County.

A B, being duly sworn, says, that he is Overseer of Highways of Road District No. , in the town of in said County ; that on the day of 18 , he gave C D, who resides in said district, and is assessed to work on the highways therein, notice to appear on the day of aforesaid, with a (*state what kind of team or implements were required*) on the road (*state where*), to do such work ; and that the said C D did not appear nor furnish any one in his stead (*or did not bring such team or implement as was required, stating it ; or when he so appeared, was idle, or hindered others*

¹ § 34, act April 11, 1873. ² § 35, *id.*

from working, or whatever the complaint is), and has not paid the commutation money for said work, nor rendered a satisfactory excuse for such neglect.

A B.

Subscribed and sworn to before me this day of
18 , *Justice of the Peace.**

36. The justice to whom such complaint shall be made shall forthwith issue a summons, directed to any constable of the county, requiring him to summon such delinquent to appear within five days before such justice, according to law, for such refusal or neglect.¹

Summons.

State of Illinois, }
—— County. } ss.

The People of the State of Illinois, to any Constable of said County :

Whereas, the town of in said County, by A B, Overseer of Highways of Road District No. , in said town, has made complaint on oath before me, a Justice of the Peace of said town, that C D, a resident of said road district, and assessed to work on the highways therein, after being duly notified to appear on the day of , with *(state what team or implements were required)* to do such work ; and that the said C D *(stating the matter of the complaint)*, and has not paid the commutation money nor rendered a satisfactory excuse.

You are, therefore, hereby required to summon the said C D to appear before me at my office in the said town, on the day of A. D. 18 , at eight o'clock A. M., to show cause why he should not be fined according to law for such refusal *(or neglect or misconduct)*.

G H, *Justice of the Peace.*

Dated at this day of 18 .

Constable's Return on Summons.

The within summons, personally served on C D, by reading the same to him, this day of 18 .

J D, *Constable.*

¹ § 36, act April 11, 1873.

* The Justice should docket this case like any other suit. See J. & C.

37. On the day of trial the justice shall proceed to hear and determine the case according to law, for the offense complained of, and shall forthwith issue an execution under his hand and seal, directed to any constable of the county where such delinquent shall reside, commanding him to levy such fine, with the costs of the proceeding; of the goods and chattels of such delinquent.¹

Judgment.

State of Illinois, }
 — County.* } ss.

The town of —, }
 vs. }
 C D. }

The said C D, having been duly summoned to appear before me, G H, the Justice of the Peace to whom the said complaint was made, to show cause why he should not be fined, according to law, for the refusal (*or neglect, or misconduct*) set forth in said complaint; and no sufficient cause having been shown by said C D, I do therefore impose upon the said C D a fine of *three dollars* for said offense, together with *two dollars* for the costs of the proceedings under the said complaint.

G H, *Justice of the Peace.*

Dated at this day of 18 .

Warrant to Levy Fine.

State of Illinois, }
 — County. } ss.

The People of the State of Illinois, to any Constable in the said County :

You are hereby commanded to levy of the goods and chattels of C D *four dollars and eighteen cents*; being *one dollar* for fine imposed by me, for (*specify the neglect or misconduct*), as set forth in the complaint of A B, Overseer of Highways of Road District No. in the said town; and also *three dollars and eighteen cents*, for the cost of the proceedings on said complaint; and bring the said sum of money before me without delay.

G H, *Justice of the Peace.*

Dated at this day of 18 .

¹ § 37, act April 11, 1873.

* Here precede the docket entries. See J. & C.

38. The constable to whom such execution shall be delivered, shall forthwith collect the moneys therein mentioned. He shall pay the fine, when collected, to the justice of the peace who issued the execution, who is hereby required to pay the same to the overseer who entered the complaint, to be by him expended in improving the roads and bridges in the district of which he is overseer.¹

39. Every fine collected for refusal or neglect to appear and work on the highways, shall be set off against his assessments or personal labor tax upon which it was founded, estimating every two dollars collected as a satisfaction for one day's work.²

40. The acceptance by an overseer of any excuse for refusal or neglect shall not, in any case, exempt the person excused from commuting for or working the whole number of days for which he shall have been assessed during the year.³

VI. HIGHWAY TAXES.

41. Resident owners to be notified ; the three days' notice; and they may pay in road labor or in money.

42. The word "paid" to be written distinctly against the names on the list, and receipts to be given on payment.

43. Returns of overseer to the supervisor (in Cook county to the county board) five days before the annual meeting of the board of supervisors.

44. Penalties for refusal or neglect to make return prescribed.

45. At least three-fourths of the road labor actually assessed to be actually performed by the first day of October in each year.

41. It shall be the duty of each of the overseers of highways to warn all residents of his district against whom a land or personal property road tax is assessed, giving them three days' notice, to work out the same upon the highways; and he shall receive such tax in labor from every able-bodied man or his substitute, at the rate of one dollar and fifty cents per day. And

¹ § 38, act April 11, 1873. ² § 39, *id.* ³ § 40, *id.*

by the commissioners of highways, containing the land and personal property road tax, with an affidavit thereto, sworn to before the supervisor of the town, or some justice of the peace of the county, that on all tracts of land on such list opposite which the word “paid” is written, such tax is paid, and that on all tracts of land on such list, opposite which the word “paid” is not written, such tax is due, and remains unpaid, according to the best of his knowledge and belief.¹

Overseer's Return of Delinquent Highway Tax.

Report of _____ Overseer of Highways of District No. _____, of unpaid road tax for the year 18____, on real estate and personal property in said district, to Supervisor of the town of _____ in the county of _____

Sir: Hereunder written is a list of all the lands of non-residents, of persons unknown, and of personal property, which were taxed on my list the current year, and on which the amount assessed by the Commissioners of Highways of said town has not been paid, and the amount of tax unpaid is as follows:

Names of Owners.	Description.	Sec.	Acres.	Value of Real Estate.	Tax on Real Estate.	Value Per. Prop.	Tax on Per. Prop.
------------------	--------------	------	--------	-----------------------	---------------------	------------------	-------------------

NOTE.—This list is required to be returned to the Supervisor of his town at least five days previous to the annual meeting of the Board of Supervisors, which commences on the second Tuesday of September, annually. Therefore, do not fail to return as above stated, under the penalty of the whole amount of tax not returned. (1 Gross, 757.)

State of Illinois, }
_____ County. } ss.

I, _____ Overseer of Highways for Road District No. _____, in the town of _____, in said County, for the year 18____, do hereby solemnly swear that on all the tracts of land described in the foregoing list, opposite which the word “paid” is written, such tax is paid, and that on all trates of land described in such list, opposite which the word “paid” is not written, such tax is due and remains unpaid, according to the best of my knowledge and belief. And further, that the personal

¹ § 43, act April 11, 1873.

property tax set forth in said list, against which the word "paid" is not written, remains likewise unpaid, according to my best knowledge and belief.

_____,
Overseer of Highways of Road District No. _____,
in the town of _____.

Subscribed and sworn to before me, this _____ day of _____
 A. D. 18 _____

_____, [SEAL.]
Justice of the Peace.

[Indorsement.]

Delinquent Road Tax.

Not paid and returned by the Overseer of Road District No. _____
 in the town of _____

Filed in County Clerk's office, 18 _____, *Clerk.*

44. If any overseer shall refuse or neglect to deliver such list to the supervisor, as provided in the last preceding section, or shall neglect or refuse to make the affidavit, as therein directed, he shall, for every such offense, forfeit the sum of five dollars, and also the amount of tax or taxes remaining unpaid, to be recovered by the commissioners of highways of the town, to be applied by them in improving the roads and bridges of such town.¹

45. It shall be the duty of every overseer of highways to have at least three-fourths of the road labor assessed in his district worked out or actually expended on the highways, previous to the first day of October in every year.²

VII. ACCOUNTS.

46. Overseer to render to one of the commissioners of highways, on the second Tuesday next preceding the annual town meeting, under oath, an account, in writing, containing:

1. The names of the persons assessed.
2. The names of those who have worked, with the number of days, respectively.
3. The names of those fined, and the amount of each fine.
4. The names of those who have commuted, and the manner of the expenditure of commutation money.
5. The amount of uncollected tax returned to the supervisor, as required in section forty-three, *supra*.

¹ § 44, act April 11, 1873. ² § 45, *id*.

47. He shall also then and there account for all moneys in hand, and pay the same over to his successor in office.

48. Penalties for refusing or neglecting to account.

46. Every overseer of highways shall, on the second Tuesday next preceding the time of holding the annual town meeting in his town, within the year for which he is elected or appointed, render, under oath, to one of the commissioners of highways of the town, an account, in writing, containing:

First — The names of all persons assessed to work on the highways in the district of which he is overseer.

Second — The names of all those who have actually worked on the highways, with the number of days they have actually worked.

Third — The names of all those who have been fined, and the sums in which they have been fined.

Fourth — The names of all those who have commuted, and the manner in which the moneys arising from fines and commutations have been expended by him.¹

Fifth — The amount of uncollected road tax which he has returned to the supervisors of the town, as required in section forty-three of this act.¹

Annual Return of Overseers of Highways.

To be made to Commissioners of Highways, previous to the second Tuesday next preceding the time of holding the annual town meeting, under the penalty of five dollars for refusal or neglect.

State of Illinois, }
 ——— County. } ss.

To the Commissioners of Highways of the town of _____ :

Gentlemen: Below please find the annual account required of me by section forty-eight of article seventeen of Township Organization law, 1861, and section forty-six of act of April 11, 1873.

¹ § 46, act April 11, 1873.

Names of all Persons Assessed to Work on Highways in District No. _____, are as follows :	Number of days actually worked by persons opposite whose names the Nos. appear.	Names of those who have been fined and the sums. See name in first column and sums opposite in this.	Names of all those who have commuted, and manner in which moneys arising from fines and commutations have been expended. For name see first column, and manner opposite the name in this column.	The amount of uncollected Road Tax returned to the Supervisor.	Remarks.
---	---	--	--	--	----------

(Here insert total.)

I hereby certify the above account to be true and correct.

Dated at this day of 18 .

Overseer of Highways, District No. .

[Indorsement.]

Annual Return of

Overseer of Highways for Road District No. _____
Filed in the office of the Town Clerk of the town of _____ on the
day of 18 .
_____, Clerk.

47. Every such overseer shall also, then and there, render an account, in writing, of all moneys in his hands by virtue of his office, and shall also pay over the same to his successor in office.¹

48. If any overseer shall refuse or neglect to render such account, or if, having rendered the same, he shall refuse or neglect to pay any balance which may then be due from him, he shall, for every such offense, forfeit the sum of five dollars, to be recovered, with the balance of the moneys remaining in his hands, by the commissioners of highways of the town, and to be applied in making and improving the roads and bridges. It shall be the duty of the commissioners to prosecute for such penalty, in every instance in which no return is made.²

VIII. SUPERVISORS.

49. The supervisor is to receive the list pursuant to section forty-four, *supra*, and lay the same before the county board.

50. Arrearages of road tax returned to be levied and collected with the county taxes, and paid over to the commissioners of highways.

¹ § 47, act April 11, 1873. ² § 48, *id.*

49. It shall be the duty of the supervisors of the several towns to receive the list of the overseers of highways when delivered, pursuant to section forty-four of this act, and to lay the same before the board of supervisors of the county.¹

50. It shall be the duty of the board of supervisors, and in Cook county the county board, to cause the amount of arrearages of road tax returned by the overseer of highways to the supervisors, as provided in section forty-three of this act, to be levied on the lands returned, and to be collected in the same manner that other taxes of the county are levied and collected, and to order the same, when collected, to be paid over to the commissioners of highways of the town, to be by them applied to the construction of roads and bridges.²

IX. MISCELLANEOUS PROVISIONS.

51. Compensation of the overseer.

52. Annual town meeting may require road tax to be collected only in money, to be expended by and under the direction of the commissioners.

53. Town clerk to furnish to the county clerk, before the first day of September, a certified plat of the road districts in his town.

54. In extending the road taxes the county clerk is to designate the district to which it belongs.

55. County and town collectors to furnish abstract of taxes to the treasurer of the commissioners of highways.

56. Commissioners to pay over the taxes according to the abstracts.

51. Each and every overseer of highways shall be entitled to one dollar and a half per day for every day he is necessarily employed in the execution of the duties of overseer, exceeding the amount of his highway labor and road tax, the number of days to be accounted to and audited by the commissioners of highways: *Provided*, that the number of days to be audited shall be left discretionary with the commissioners of highways.³

¹ § 49, act April 11, 1873. ² § 50, *id.* ³ § 51, *id.*

52. The legal voters of any township in the state, in counties where township organization has been or may hereafter be adopted, may, by a majority vote at their annual town meeting, provide that thereafter the road tax assessed by the commissioners of highways, under the provisions of this act, be collected in money only, to be expended by the commissioners of highways in such townships, on roads within their jurisdiction, by such agents or officers as they shall direct, and in such manner as they shall direct.¹

53. The town clerk of each town shall, on or before the first day of September next, and annually thereafter (if the boundary line be changed), furnish to the county clerk a certified plat of the several road districts of his town.²

54. In all counties acting under township organization, the county clerk, in extending district road tax upon the tax books, shall designate to what district said tax belongs.³

55. It shall be the duty of county and township collectors to make out an abstract of the amount of district road tax due to each district of the respective townships, and deliver the same to the treasurer of the commissioners of highways.⁴

56. The commissioners of highways shall pay over the district road tax according to the abstracts as furnished above, to the various overseers of roads in their respective districts, to be applied on the roads of said districts.⁵

X. REGULATIONS.

57. Defacing guide boards, etc.

58. Obstructions to highways.

59. Destroying or injuring bridges.

60. Suits for fines and penalties.

61. Fines recovered to be paid to the commissioners of highways.

¹ § 52, act April 11, 1873. ² § 53, *id.* ³ § 54, *id.* ⁴ § 55, *id.* ⁵ § 56, *id.*

- 62. Shade and ornamental trees, hedges, etc.
- 63. Underground crossings.
- 64. Fences may be connected, in certain cases, with bridges.
- 65. Public highways to be not less than fifty feet nor more than sixty-six feet wide.
- 66. Notice — “Five dollars fine for riding or driving on this bridge faster than a walk” — may be put up.
- 67. Fine may be imposed.
- 68. Overseers may enter upon land adjacent to highways, to open ditches, drains, etc.

57. For destroying or defacing any guide board, post or milestone, or any notice or direction put up on any bridge or otherwise, the offender shall forfeit a sum not less than three dollars nor more than fifty dollars.¹

58. If any person shall injure or obstruct a public road by felling a tree or trees in, upon or across the same, or by placing or leaving any other obstruction thereon, or by encroaching upon the same with any fence, or by plowing or digging any ditch or other opening thereon, or by turning a current of water so as to saturate or wash the same, or shall leave the cuttings of any hedge thereupon, for more than five days, shall forfeit for every such offense a sum not less than three dollars nor more than ten dollars, and in case of placing any obstruction on the highway, an additional sum of not exceeding three dollars per day for every day he shall suffer such obstruction to remain after he has been ordered to remove the same by any of the commissioners of highways, complaint to be made by any person feeling himself aggrieved: *Provided*, this section shall not apply to any person who shall lawfully fell any tree for use, and will immediately remove the same out of the road, nor to any person through whose land a public road may pass, who shall desire to drain his land, and shall give due notice to the com-

¹ § 57, act April 11, 1873.

missioners of such intention. *And provided, further,* that any commissioners or overseers of highways, after having given reasonable notice (to the owners) of the obstruction, or person so obstructing or plowing or digging ditches upon such road, may remove any such fence or other obstruction, fill up any such ditch or excavation, and recover the necessary cost of such removal from such owner or other person obstructing such road aforesaid, to be collected by said commissioners before any justice of the peace having jurisdiction.¹

59. If any person shall purposely destroy or injure any public bridge, culvert or causeway, or remove any of the timber or plank thereof, or obstruct the same, he shall forfeit a sum not less than three dollars nor more than one hundred dollars, and shall be liable for all damages occasioned thereby, and all necessary costs of rebuilding or repairing the same.²

60. All suits for the recovery of any fine or penalty under this act, shall be brought in the name of the town in which the offense is committed; and it shall be the duty of commissioners and overseers of highways to seasonably prosecute for all fines and penalties under this act; but in case of a failure of said officers to so prosecute, complaint may be made by any person whatever.³

61. All fines recovered under the provisions of this act, unless otherwise provided, shall be paid over to the commissioners of highways of the town where the offense is committed, to be expended upon the roads and bridges in the town.⁴

62. It shall be lawful for the owners or occupants of land bordering upon any public road to plant shade

¹ § 58, act April 11, 1873. ² § 59, *id.*

³ § 60, *id.* See §§ 35, 36 and 37, *supra.* ⁴ § 61, *id.*

and ornamental trees along and in such road, at a distance not exceeding one-tenth of the legal width of the road from its margin; and also to erect and maintain a fence, so long as shall be actually necessary for the purpose of raising a hedge on said margin, a distance of four feet from and within said marginal lines.¹

63. Any person owning, using or occupying lands on both sides of any public highway, shall be entitled to the privilege of making a crossing under said highway for the purpose of letting his cattle and other domestic animals cross said road: *Provided*, said person shall erect, at his own expense, a good and substantial bridge, with secure railing on each side thereof, and build an embankment of easy grade on either side of said bridge; said bridge not to be less than sixteen feet wide, and to be approved by the commissioners of highways of the town in which the bridge is built, and the same to be kept constantly in good repair by the owner or occupant of said land, subject to their direction: *And provided, further*, that in case such crossing is made on any water-way or natural channel for water, and where a culvert or bridge is maintained or required for road purposes, said owner or occupant shall not be required to pay for or construct any more of said crossing than the additional cost of such crossing over and above the necessary cost of a suitable culvert or bridge for road purposes at such place.²

64. And where any bridge on a public road is constructed over a stream or body of water, where the depth or current of water or the nature of the bank or banks of such stream or body of water is such as to render a fence on the marginal line of the public road impracticable or very expensive to construct and keep

¹ § 62, act April 11, 1873. ² § 63, *id.*

in repair, the owner of the land bordering on the public road shall have the right to connect the road fence on either or both banks of the stream or body of water to said bridge or any pier or abutment thereof, or to any embankment or timber approach to said bridge: *Provided*, that no necessary ford across said stream or body of water shall be permanently obstructed thereby: *And provided, further*, that any such connecting fence shall be constructed by the consent and under the direction of the commissioners of highways of the town in which the bridge may be located.¹

65. All public highways laid out by order of the commissioners of highways, or supervisors, on appeal, shall not be less than fifty feet, nor more than sixty-six feet wide.²

66. The commissioners of highways of each town may, when they shall deem it advisable, put up and maintain, in conspicuous places, at each end of any bridge in such town, maintained at the public charge, a notice, with the following words, in large characters: "Five dollars fine for riding or driving on this bridge faster than a walk."³

67. Whoever shall ride or drive faster than a walk, over any bridge upon which notice shall have been placed and shall then be, shall forfeit to the town, for every such offense, the sum of five dollars.⁴

68. The overseers of highways of the several towns are hereby authorized to enter upon any land adjacent to any highway in their respective districts, for the purpose of opening any ditch, drain, necessary sluice or water-course, whenever it shall be necessary to open a water-course from any highway to the natural water-courses, and to dig, open and clean ditches,

¹ § 64, act April 11, 1873. ² § 65, *id.* ³ § 66, *id.* ⁴ § 67, *id.*

upon said land for the purpose of carrying off the water from said highways, or to drain any slough or pond on said highway: *Provided*, that unless the owner of such land, or his agent, shall first consent to the cutting of such ditches, the overseer of highways shall apply to any justice of the peace of the county in which such road is situated, for a summons directed to any constable of said county, commanding him to summon the said owner to appear before the said justice, at a time and place specified in such summons, not less than five nor more than fifteen days from the date thereof, for the purpose of having the damage assessed which such owner may sustain by reason of the digging or opening such ditches or drains. The said summons shall be under the hand of such justice and be served in the same manner as a summons is now served in civil actions before justices of the peace. On the return of such summons, a venire shall be issued for a jury as in other cases in the trial of civil actions before justices of the peace, which jury shall assess such damages and render a verdict therefor, which shall be final and conclusive of the amount of damages sustained by such person; and the amount so awarded shall be audited, levied and collected in the same manner provided in section fourteen, article seventeen of the township organization law, and the overseer of highways shall be warranted, and is hereby empowered, to enter such lands, and dig, open and clean such drains, ditches and water-courses as aforesaid, for the purposes contemplated in this act, and is further authorized to use and employ the road, labor and money of his district for such purposes: *Provided*, that in case the owner of said lands is a non-resident, service may be had by leaving a copy with the occu-

pant or agent, or by notice in the same manner as prescribed in section eighty-two (82) of this act.¹

XI. ALTERING AND VACATING ROADS, AND LAYING OUT NEW ROADS.

69. Twelve or more freeholders to petition.
70. Requisites of the petition.
71. Copies to be posted in three of the most public places in the vicinity.
72. Commissioners to meet, examine and determine.
73. Adjournment for not to exceed twenty days in all; procedure prescribed.
74. Petition to vacate.
75. Petition for new road.
76. Damages to be ascertained and order made notwithstanding an appeal from a justice of the peace.
77. Damages may be settled and release received from owners of damaged property.
78. Certificate of doings to be presented to any justice of the peace of the county asking for a jury.
79. The notice of application to be given to the owners.
80. The jurors and the jury.
81. Challenge for cause; notice of trial to owners, by the justice.
82. Unknown owners; notice to be published.
83. Service of the notice.
84. The jury sworn.
85. The hearing; verdict; rules for estimating damages.
86. Separate trials may be had.
87. Final meeting of the commissioners.
88. All proceedings may be revoked.
89. Order to be entered if proceedings be not revoked.
90. In cases where the damages are agreed on and right of way released, order may at once be entered.
91. Inducements to establish, alter, widen or vacate any road may be offered to the commissioners.
92. Record of the town clerk or a certified copy of papers and records *prima facie* evidence of the regularity of the prior proceedings.
93. Private roads.
94. Two years in which to open after entry of the order; limitations.

¹ § 68, act April 11, 1873.

REPAIRS. — The general rule is, that the public have a right to all the earth and materials necessary for the improvement of the road. Such earth and materials may be removed from one part of the highway to another, even beyond the boundaries of the land opposite which they are taken.

Fish v. Mayor of Rochester, 6 Paige 272.

Where a highway crosses or passes alongside of a natural stream, the road must be so worked as not to obstruct the natural flow of water.

People v. Kingman, 24 N. Y. 559; see Plummer v. Sturtevant, 32 Me. 325.

The overseer may cut down, level, grade and alter every portion of the space included in the highway, for the improvement of the road, being only responsible for a wanton or malicious injury to the rights of adjacent owners. Graves v. Otis, 2 Hill 470; Benedict v. Gort, 3 Barb. 469; Radcliff v. Brooklyn, 4 N. Y. 203.

95. Eight months allowed to harvest crops, remove fences, etc.
96. Persons may be paid for work done on private roads.
97. Roads on town lines; coterminous towns.
98. Allotment to the several towns interested — the rules of.
99. Appeal from the verdict of the jury to three supervisors; notices and allowance.
100. Three supervisors to be summoned and to hear the appeal.
101. Report of their decision.
102. Costs of appeal, bond, etc.
103. Majority opinion of the supervisors to prevail.
104. Appeals where several towns are interested.
105. Maintenance of roads between coterminous towns.
106. Roads on state line.
107. Bridges between several towns or counties.
108. Joint contracts, how made.
109. Contribution for expenses, how compelled.
110. Refusal of commissioners to act; personally liable, when.
111. Appropriations may be had on proper application from the county to build expensive bridges.
112. Special town meeting may be called to raise money; bonds may be issued — *modus operandi*.
113. Upon petition of twelve legal voters, surveyor to be employed.
114. Establishment of a new road on the route of an established road not to vacate the prior road.
115. Bridges, how to be contracted for.
116. Road tax may be paid by work on bridges.
117. When road is to pass through inclosure, sixty days' notice to be given to owner or occupant to remove the fences, etc.
118. Compensation of the commissioners of highways.
119. Highways laid out to be opened within five years, or deemed vacated.
120. The highway commissioners to ascertain the amount of money necessary for highways and bridges, and report the same to the supervisor, who shall cause the same to be submitted to the county board.
121. Extending road taxes by the county clerk.
122. Certificate of the county clerk to the treasurer of the commissioners of highways.
123. Tax to be paid over when collected to such treasurer.
124. Commissioners of highways to furnish a list of tax-payers of each district previous to the first day of October in each year.
125. Taxes collected under the "Act in regard to roads and bridges," approved April 10, 1872, to be paid over to the treasurer of the commissioners of highways for improving roads and bridges.
126. Act of April 10, 1872, aforesaid, repealed.
127. Emergent.

69. The commissioners of highways may alter, widen or vacate any road, or lay out any new road in their respective towns, when petitioned by any number of freeholders not less than twelve, residing within three

miles of the road so to be altered, widened, vacated or laid out.¹

Petition for Vacating Road.

State of Illinois, }
 ——— County. } ss.

Town of

To the Commissioners of Highways of the town of _____ in the County of _____
 and State of Illinois :

The undersigned, freeholders, residing in said town,* within three miles of the road known as

do hereby petition you to vacate
 said road

And your petitioners pray that you will proceed and vacate said road accordingly.

Dated at _____ this _____ day of _____ 18

Names : A B, etc.

[Indorsement.]

Petition for Discontinuance of Road.

To discontinue the road from

Filed in the office of the Town Clerk the _____ day of _____
 18 . _____, Town Clerk.

State of Illinois, }
 ——— County. } ss.

being duly sworn, doth depose

and say that he did, on the _____ day of

A. D. 18 ., post up three copies of the within petition, as follows,
 viz. :

One copy at

one copy at

and

one copy at

in the town of

in said County, they being three

of the most public places in said town.

Subscribed and sworn to before me, this _____
 day of _____ A. D. 18 .

¹ § 69, act April 11, 1873.

* Twelve freeholders at least of *the town* in which the road is to be affected or located must sign the petition. The requirements of this section will not be met when any portion of the twelve reside out of such town.

Warne v. Baker, 35 Ill. 382.

The undersigned, Commissioners of Highways of Road District
 met at _____ on the
 day of _____ 18 __, ten days' notice of the time and place
 of such meeting having been given, as required by law, to hear
 reasons for and against the vacating of the road described in the
 within petition, as therein prayed, and having personally exam-
 ined said road, and heard such reasons as were offered for and
 against vacating the same, we decided that the prayer of said
 petition should be _____ which decision was publicly
 announced.

Given under our hands, this _____ day of _____ 18 __.

_____,
 _____,
 _____,

*Commissioners of Highways.**

70. Said petition shall set forth, in writing, a descrip-
 tion of the road, and what part thereof is to be altered,
 widened or vacated, and if for a new road, the names
 of the owners of lands, if known, and if not known it
 shall be so stated, over which the road is to pass, the
 points at which it is to commence, its general course,
 and the place at or near where it is to terminate.¹

71. Whenever any such number of freeholders deter-
 mine to petition the commissioners of highways for the
 alteration, widening or vacation of any road, or laying
 out any new road, they shall cause a copy of this peti-
 tion to be posted up in three of the most public places
 in the town, in the vicinity of the road to be laid out,
 altered, widened or vacated, at least twenty days before
 any action shall be had in reference to such petition.
 The posting of any notice required by this act may be
 proved by the affidavit of the person posting the same,
 or by other legal evidence.²

¹ § 70, act April 11, 1873. ² § 71, *id.*

* NOTE.— In case the petition is granted, there must be, besides this memo-
 randum, a formal order vacating the road, a copy of which order, together
 with the petition, must be filed in the County Clerk's office within ten days
 after the date of the decision.

Notice—Petition for Vacating Road.

Notice is hereby given, That the following is a true copy of a petition which will be presented to the Commissioners of Highways, after the expiration of 20 days.

Dated this day of 18 .

State of Illinois,) Town of
 — County. } ss.

To the Commissioners of Highways of the town of _____ in the County of _____ and State of Illinois:

The undersigned, freeholders, residing in said town, within three miles of the road known as

do hereby petition you to vacate
said road

And your petitioners pray that you will proceed and vacate said road accordingly.

Dated at this day of 18

Names: A B, etc.

Petition for Altering of Road.

State of Illinois, } ss. Town of
 ——— County. }

To the Commissioners of Highways of the town of _____ in the County of _____ and State of Illinois :

The undersigned, freeholders, residing in said town, within three miles of the road known as

do hereby petition you to alter
said road as follows: Commencing at

in said town, and running the line of said road as follows, viz.:

And your petitioners pray that you will proceed and alter said road accordingly.

Dated at this day of 18 .

Names: A B, etc.

[Indorsement.]

Petition for Altering Road.

To alter the road from

Filed in the office of the Town Clerk this _____ day of _____, 18__.

State of Illinois, }
 ——— County. } ss.

being duly sworn, doth depose
 and say that he did on the _____ day of
 A. D. 18____, post up three copies of the within petition, as follows,
 viz. :
 One copy at _____
 one copy at _____ and
 one copy at _____
 in the town of _____ in said County, they being three
 of the most public places in said town.

Subscribed and sworn to before me, this _____ day of
 A. D. 18____.

The undersigned, Commissioners of Highways of the town of _____
 met at _____ on the _____ day of
 18____, ten days' notice of such meeting having
 been given, as required by law, to hear reasons for and against
 altering the road described in the within petition, as therein
 prayed; and having personally examined the route of said road,
 and heard such reasons as were offered for and against altering
 the same, we decided that the prayer of said petition should be
 _____ which decision was publicly announced.

Given under our hands, this _____ day of
 18____.

*Commissioners of Highways.**

Copy Petition for Altering of Road.

Notice is hereby given, That the following is a true copy of a
 petition which will be presented to the Commissioners of High-
 ways, after the expiration of 20 days.

Dated this _____ day of _____ 18____.

State of Illinois, }
 ——— County. } ss.

Town of _____

To the Commissioners of Highways of the town of _____ in the County of _____
 and State of Illinois :

The undersigned, freeholders, residing within three miles of

* NOTE.—In case the petition is granted, there must be, besides this memo-
 randum, after proper proceedings, a formal order altering the road, which
 order, together with the report of the Surveyor, the petitions, releases or
 agreements, in respect to damages, must be filed in the County Clerk's office
 within ten days after the date of such order.

the road known as

do hereby petition you to alter
said road as follows: Commencing at

in said town of _____ and running the line of said road
as follows, viz.:

And your petitioners pray that you will proceed and alter said
road accordingly.

Dated at _____ this _____ day of _____ 18 .

Names: A B, etc.

72. Whenever the commissioners of highways shall receive any such petition, with the proof of the posting of copies, as in the next preceding section specified, they shall fix upon a time when and where they will meet to examine the route of such road, and to hear reasons for or against the altering, widening, vacating or laying out the same—which meeting shall be within twenty days after the expiration of the twenty days required for the posting of the copies of the petition in the next preceding (71) section, and they shall give at least ten days' notice of the time and place of such meeting, by posting up notices in three of the most public places in the township, in the vicinity of the road to be widened, altered or vacated.¹

¹ § 72, act April 11, 1873.

The statute requiring the commissioners of highways to meet within ten days after the twenty days prescribed for posting a petition for the alteration or discontinuance of any road, or laying out any new road, to hear reasons for and against the object sought by the petition, is peremptory.

Commissioners *v.* Harper, 38 Ill. 104.

NOTICE MUST BE GIVEN, as required by statute, of such meeting of the commissioners, and the want of it will vitiate their proceedings. It is essential to their jurisdiction. What is said to the contrary in *Wells v. Hicks*, 27 Ill. 345, is to be regarded as *obiter dictum* merely.—*Id.*

TWO OF THE THREE COMMISSIONERS can make a contract for building a bridge, which will be binding on the whole body.

Comm'rs of Highways *v.* Baumgarten, 41 Ill. 254.

HIGHWAY COMMISSIONERS ARE A QUASI corporation.—*Id.*

THE COMMISSIONERS MAY ALTER, modify or rescind any order their prede-

Highway Notice.

A petition having been presented to the Commissioners of Highways of the town of _____ in the County of _____ to _____ road upon the following described route, to wit:

The Commissioners do hereby give notice, That they have fixed upon the _____ day of _____ 18 _____, at the hour of _____ o'clock, in the _____ noon, at the _____ in said town, as the time and place they will meet to hear any reasons that may be offered for or against the _____ of said road, when and where all persons interested can be heard.

Dated at _____ this _____ day of _____ 18 _____.

_____,
_____,
_____.

Commissioners of Highways.

cessors have made, provided their action does not affect rights of third persons acquired under such order.

The People v. Vermilion Co., 47 Ill. 256; Beckwith v. English, 51 Ill. 147.

They cannot locate a bridge where no highway exists.

The People v. Vermilion Co., 47 Ill. 256.

NECESSITY OF ADJOURNING FROM DAY TO DAY.—The omission of commissioners of highways to adjourn from day to day, pending proceedings before them upon a petition for a public road, is not an irregularity which is jurisdictional in its character, and an appeal to the supervisors upon the merits would operate as a waiver thereof.

Allison v. Comm'rs of Highways, 54 Ill. 170.

PROCEEDINGS OF COMMISSIONERS.—A petition for the laying out of a highway must be posted up in three of the most public places in the town, twenty days before any action can be had upon it; and the commissioners, upon determining to lay out, alter, or discontinue a highway, must give eight days' additional notice of time and place, when and where they will meet to hear reasons for or against their proposed action.

Corley v. Kennedy, 28 Ill. 143.

AS TO WHEN AN APPEAL and when *certiorari* should be resorted to, for relief from an order of the commissioners of highways.

Comm'rs v. Harper, 38 Ill. 104.

NOTICE.—Where the record of the proceedings before commissioners of highways shows that notice of the laying out of the road was properly given, upon an appeal regularly taken to the supervisors, they acquire the jurisdiction to determine the validity of the notices, and their decision upon that point cannot be collaterally attacked.

Wells v. Hicks, 27 Ill. 343.

The statute, which requires the commissioners of highways to act within ten days after the expiration of the twenty days' notice, does not compel them to decide the matter within the thirty days; it is sufficient that they commence their work within that time.—*Id.*

Surveyor's Report.

To the Commissioners of Highways of the town ofin the County of
and State of Illinois :

The undersigned, having been employed by you to make a survey of a road beginning at

would report that the following is a correct survey thereof as made by me under your directions, to wit :

and that below is a correct plat of said road, according to said survey.

Dated atthisday of18

County Surveyor ofCounty.

Township No.

Range No.

of

Principal Meridian.

6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

[Indorsement.]

Surveyor's Report.

Survey of road beginning at

Filed thisday ofA. D. 18, in the office of
the Town Clerk of the town of
———, Town Clerk.

73. The commissioners may, by public announcement, and by the posting of a notice at the time and place named for the first meeting, adjourn the meeting from time to time, but not for a longer period than twenty days in all; and shall, at the first, or such adjourned meeting, within said twenty days, decide and publicly announce whether they will grant or refuse the prayer of the petition, and shall indorse upon, or annex to the petition, a brief memorandum of such decision, to be signed by the commissioners. Such decision shall be subject to revocation, in case the prayer of the petition is granted, in the manner hereinafter provided. In case the commissioners refuse to grant the prayer of the petition, they shall, within ten days thereafter, file the same, so indorsed, or with such decision annexed thereto, in the office of the town clerk.¹

74. If the petition is simply for the vacation of a road, and the commissioners of highways, or a majority of them, shall, at such meeting, decide that the prayer of the petitioners should be granted, they shall order such road to be vacated—a copy of which order, together with the petition, shall be by them filed with the town clerk; such order to be so filed within ten days after the date of such decision.²

75. If such petition is for the establishment of a new road, or the alteration or widening of an existing road, and the commissioners of highways, or a majority of them, shall be of the opinion that the prayer of the petitioners should be granted, they shall cause a survey and a plat of such road to be made by a competent surveyor, who shall report such survey³ and plat

¹ § 73, act April 11, 1873. ² § 74, *id.*

³ In quite a recent case (55 Ill. 117) the court says: “On the trial in the court below, the defendants offered in evidence under their plea, the order of the supervisors that attempted to lay out the highway, which was objected to

to said commissioners, giving the courses and distances, and specifying the land over which said road is to pass—in which they may make such changes between the termini of the road described in the petition, as the convenience and interest of the public, in their judgment, may require.¹

by the counsel for the plaintiff, on the ground, as stated in the bill of exceptions, 'that the surveyor's plat of the survey attached to and incorporated in said record does not appear to have been signed by the surveyor referred to in said report.' The court sustained the objection, and refused to allow the order of the supervisors to be read to the jury. If, on an appeal, the supervisors undertake to lay out and establish a public highway, they must proceed in all things the same as commissioners of highways. They certainly have no higher or greater authority than the commissioners from whom they obtain jurisdiction. The statute distinctly defines the duties of the commissioners of highways in such cases. (Gross' Comp. 771, § 58.) By the statute, they are directed 'to cause a survey to be made by a competent surveyor, who shall make a report to them of such survey, accompanied with a plat particularly describing the route by metes and bounds, courses and distances, and also the land over which the road passes. They shall incorporate such survey, accompanied with a plat, in an order to be signed by them, which order, together with the petition and report of the surveyor, shall be deposited with the town clerk.' It would seem to be only necessary, under the provisions of this statute, for the commissioners of highways, or the supervisors when, on an appeal, they undertake to lay out the road, to incorporate so much of the survey as indicates clearly the courses and distances of the route of the road, and the land over which it passes. They are certainly not required to incorporate the plat into their order. It is provided that the plat is to accompany the order, and is to be filed in the town clerk's office. The same provision applies to the surveyor's report. The statute does not require the commissioners, or the supervisors when they act, to incorporate the whole of the surveyor's report into their order. A substantial compliance with the provisions of the statute is all that is ever required. It is not necessary for the commissioners or supervisors to state, in their order laying out a road, that the surveyor signed his report, which the statute requires to be made to them. There is nothing in the statute on that subject. If the statute does not direct them so to state in their order, then it is not necessary. We have been referred to the case of *Town v. the Town of Blackberry*, 29 Ill. 137, as holding a different rule from the one here stated. We have examined that case and find it in entire harmony with the views here expressed. The order of the supervisors, which attempted to establish the road, should have been permitted to go to the jury for their consideration. The order adopted the survey and plat made by the surveyor, and that was sufficient, so far as the order itself is concerned. (*Wells v. Hicks*, 27 Ill. 343.) The evidence was pertinent to the issue made by the pleadings, and no reason is perceived why the jury ought not to have been permitted to consider it, with the other evidence in the case." (*Tower v. Pitstick*, 55 Ill. 118.)

¹ § 75, act April 11, 1873.

Petition for New Road.

State of Illinois, } Town of
 — County. }

To the Commissioners of Highways of the town of _____ in the County of _____ and State of Illinois :

The undersigned, freeholders residing within three miles of the route hereinafter mentioned and described for a road, do hereby petition you to lay out a new road, of the width of four rods, as follows : Commencing at the

in said town, and running from thence in a direction on the most eligible route to

The names of the owners of lands over which the same is to pass * are:

And your petitioners pray that you will proceed to lay out said road, and cause the same to be opened according to law.

Dated at this day of A. D. 18 - .

Names: A B. etc.

[Indorsement.]

Petition for New Road.

To lay out road from

Filed in the office of the Town Clerk the day of 18 .
— — — , *Town Clerk.*

State of Illinois, { ss.
 ——— County. }

being duly sworn, doth depose

and say, that he did, on the _____ day of _____
A. D. 18 ____, post up three copies of the within petition, as follows,
viz. :

One copy at _____ and
 one copy at _____ and
 one copy at _____
 in the town of _____ in said County, they being three
 of the most public places in said town.

Subscribed and sworn to before me, this _____ day of _____
A. D. 18 _____. _____

* NOTE.—When the owners of any of the lands over which the road is to pass are unknown, this fact should be so stated in the petition.

The undersigned, Commissioners of Highways of the town of _____
 met at _____ on the _____ day of _____
 18____, ten days' notice of the time and place of
 said meeting having been given as required by law, to hear rea-
 sons for and against the laying out of the road described in the
 within petition, as therein prayed; and having personally exam-
 ined the route of said road, and heard such reasons as were offered
 for and against laying out the same, we decided that the prayer
 of said petition should be _____ which decision was
 publicly announced.*

_____,
 _____,
 _____,

Commissioners of Highways.

Petition for Laying Out New Road.

Notice is hereby given, That the following is a true copy of a
 petition which will be presented to the Commissioners of High-
 ways, after the expiration of 20 days.

Dated this _____ day of _____ 18____.

State of Illinois, { _____ Town of _____
 _____ County. }

*To the Commissioners of Highways in the town of _____ in the County of _____
 and State of Illinois :*

The undersigned, freeholders, residing within three miles of
 the route hereinafter mentioned and described for a road, do
 hereby petition you to lay out a new road, of the width of four
 rods, as follows: Commencing at the

in said town, and running from thence in a
 direction on the most eligible route to

The names of the owners of lands over which the same is to
 pass are:

And your petitioners pray that you will proceed to lay out said
 road, and cause the same to be opened according to law.

Dated at _____ this _____ day of _____ A. D. 18____.

Names: A B, etc.

* NOTE.—In case the petition is granted, there must be, besides this memo-
 randum, after proper proceedings, a formal order laying out the road, which
 order, together with the report of the surveyor, the petition and the releases
 or agreements in respect to damages, must be filed in the town clerk's office,
 within ten days from the date of such order.

76. They shall also, before they order any road to be established, altered, widened or vacated, ascertain, as hereinafter provided, the aggregate amount of dam-

Bond in Case of Appeal from Award of Road Damages.

Know all men by these presents, That we,
of _____ in the County of _____ and State of
Illinois, are held and firmly bound unto
in the penal sum of _____ dollars, for the payment of
which, well and truly to be made, we bind ourselves, our heirs,
executors and administrators, jointly, severally and firmly by
these presents.

Signed with our hands and sealed with our seals, this
day of _____ 18 .

The condition of the above obligation is such, That whereas,
the above bounden _____ ha _____ appealed from the ver-
dict of a jury duly impaneled to assess the damages in the matter
of the laying out of a public highway from _____

which verdict was rendered on the _____ day of
_____ 18 , before _____ Esq., a Justice of
the Peace of said County of _____ to the
Court of said County.

Now, therefore, if the above bounden
shall promptly pay, or cause to be paid, all costs arising from said
appeal, in case the said verdict of the jury in the premises shall
be in all things sustained, then the above obligation to be void;
otherwise to remain in full force and virtue.

_____ [SEAL.]
_____ [SEAL.]
_____ [SEAL.]

Signed, sealed and delivered in presence of

The above bond of _____ of _____
Illinois, approved by me this _____ day of _____,
A. D. 18 . _____
Justice of the Peace

[Indorsement.]
Road Appeal Bond.

Bond of _____
_____ Securities.

Filed this _____ day of _____ A. D. 18 , in the office of
the _____

ages which the owner or owners of the land over which such road is to pass, shall be entitled to, by reason of the location, alteration or vacation of such road: *Provided, however*, that in case an appeal is taken from the assessment of damages before the justice of the peace, the commissioners may, in their discretion, make an order laying out, widening, altering or vacating such road, either before or after such appeal is determined, in the manner hereinafter provided.¹

77. The damages sustained by the owner or owners of the land, by reason of the establishment, alteration, widening or vacation of any road, may be agreed upon by the owners of such lands, if competent to contract, and the commissioners of highways, or they may be released by such owners—in which case the agreement or release shall be in writing, and shall be filed and recorded with the copy of the order establishing or altering such road, in the town clerk's office, and shall be a perpetual bar against such owners, their grantees and assigns, for all further claims for such damages.²

Release of Damages.

Whereas, a road was _____ on the _____ day of _____
 A. D. 18 __, by _____ and _____
 Commissioners of Highways of the town of _____
 in the County of _____ and State of Illinois, on the
 application of the requisite number of legal voters, residing with-
 in three miles of said road, as follows: Commencing _____
 which road passes through certain lands owned by me, being
 known and described as follows:

Now, therefore, know all men by these presents, That I,
 _____ for value received, do hereby release all

¹ § 76, act April 11, 1873. ² § 77, *id*

claims to damages sustained by me, by reason of laying out and opening said road through my lands, above described.

In witness whereof, I have hereunto set my hand and seal, this
day of _____ A. D. 18__.

— [SEAT.]

Executed and delivered in presence of

[Indorsement.]

Release of Damages.

Of

Dated 18 .

Filed in the Town Clerk's office of the town of _____ the
day of _____ 18 .

_____, *Town Clerk.*

Agreement for Damages in Laying Out or Altering Road.

Whereas, a road was laid out on the _____ day of _____
A. D. 18____, by _____ and _____ Commis-
sioners of Highways of the town of _____ in the County
of _____ and State of Illinois, on the application of the
requisite number of freeholders, residing within three miles of
said road, as follows: Commencing

which road passes through the land of
being known and described as follows, viz.:

Now, therefore, it is hereby agreed between the said Commissioners and the said _____ that the damages sustained by the said _____ by reason of the laying out and opening said road upon his land, hereinbefore described, be liquidated and agreed upon at _____ dollars.

In witness whereof, the said Commissioners and the said
have hereunto subscribed their names, this

day of A. D. 18 .

Commissioners of Highways.

[Indorsement.]

Agreement for Damages in Laying Out or Altering Road.

Of damages agreed, \$

Dated 18 .

Filed this _____ day of _____ 18____, in the Town Clerk's
office of the town of _____

_____, Town Clerk.

78. In case such damages are not released or agreed upon, as in the preceding section specified, the commissioners of highways shall, within twenty (20) days from the date of the meeting at which it was decided to grant the prayer of the petition, make a certificate that they are about to establish, widen, vacate or alter a public road, describing such road, vacation, widening or alteration, and the land over or on which such road is to be established, altered, widened or vacated, and naming the owners of such land, if known, and if not known, stating the fact, and asking for a jury to assess the damages of such owners, and shall present such certificate to some justice of the peace of the county, who shall summon a jury of six persons in the manner hereinafter provided, having the qualifications of jurors, to appear before such justice of the peace at a time to be fixed by him, within ten days from the time such certificate was presented to him, to assess such damages.¹

79. The commissioners of highways shall also notify each and every owner of land — if known, and a resident of the county — whose damages are to be assessed, that they will apply to some justice of the peace of the county (giving the time when and place where) to have a jury impaneled to assess such damages.²

¹ § 78, act April 11, 1873.

² § 79, *id.*

WAIVER. — One entitled to the notice of the meeting of the jury waives the omission of it by appearing before the jury and contesting.

Mohawk etc. *v.* Artcher, 6 Paige 83.

Persons who agree upon the jurors cannot object to their competency.

People *v.* Taylor, 34 Barb. 481.

Notice to Land Owners of Application for Jury to Assess Damages.

State of Illinois, } ss. Office of the Commissioners of High-
 ——— County. } ways of
 To _____, Esq.,

This is to notify you that on the _____ day of
 18____, we shall apply to _____
 Esq., a Justice of the Peace of said County, at
 to have a jury impaneled to assess the damages to which you may
 be entitled by reason of the _____ of a public road over
 certain land by you owned, as by us determined.

Given under our hands this _____ day of _____
 18____.
 _____,
 _____,
 _____,
Commissioners of Highways

80. Upon the presentation of such certificate by the commissioners of highways, the justice of the peace shall forthwith name eighteen persons having the qualifications of jurors, two-thirds of whom shall not be residents of the town in which the proposed road is located. The commissioners of highways shall have the right to strike from such list of names the names of six of such persons named, and the owners of the lands whose damages are to be assessed, or their authorized agent or agents, shall also have the right to strike from such list the names of six other persons. The striking from the list of said names shall be done alternately, one at a time, by the commissioners of highways and the claimants, the commissioners beginning first; and the six persons whose names still remain on said list, shall comprise the jury to assess such damages: *Provided*, that if the commissioners of highways and the owners of lands shall fail to strike from such list the names of twelve persons, the justice of the peace shall select from the names still remaining, the six persons to constitute said jury.'

¹ § 80, act April 11, 1873.

81. At the trial of the case, either party shall have the right of challenge for cause, and for that only; and any deficiency in the number of jurors, from whatever cause, shall be supplied by summoning other persons residing in the township, or in an adjoining township, in the same manner as in a civil case. Such justice of the peace shall notify the owners of such land mentioned in such certificate to appear at the same time before such justice to prove their damages.¹

82. In case it shall appear either from the certificate of the commissioners, the affidavit of any person, or the return of any officer to whom the notice may be delivered for service, that there is an unknown owner or owners who cannot be found and served within the county, such justice shall also cause notice to be posted in three of the most public places in the vicinity of such proposed road or alteration, at least six days before the time fixed for the appearance of such jury, stating when such jury is to be impaneled by him, and describing the road to be established, altered, widened or vacated as petitioned for, and the lands for which damages are to be assessed.²

83. The notice to such owners of lands may be served by any constable or one of the petitioners, or other person of lawful age, at least five days before the time of appearance. If any of such owners is an infant, such summons shall be served by delivering a copy to the infant or its guardian, if any; if no guardian, the person with whom he or she resides. If any owner is a lunatic, or habitual drunkard having a conservator, or insane, by delivering a copy to his conservator, if any; if any such owner is a married woman, by delivering a copy to her.³

¹ § 81, act April 11, 1873. ² § 82, *id.* ³ § 83, *id.*

Justice's Notice to Land Owner to prove Damages by Laying out of Road, etc.

State of Illinois, }
 ——— County. } ss.

Whereas, the Commissioners of Highways of
 have presented to me a certificate stating that they are about to
 a public road over certain lands therein
 described, and asking for a jury to assess the damages to which
 the owners of said lands may be entitled by reason of the
 of said road over the same, in which certificate
 you are named as the owner of certain of said lands, to wit :

You are therefore hereby commanded to appear before me at
 on the day of 18 ,
 to prove the damages by you sustained in the premises.

Given under my hand this day of
 18 .
Justice of the Peace.

[Indorsement.]

Summons to

land owner, to appear and prove damages in the matter of the laying out of a
 road.

Issued 18 . Returnable 18 .
 Served the within summons by ———

84. The jury shall appear before and be sworn or affirmed by such justice, faithfully and impartially to assess the damage of each of the owners specified in such certificate, or those of them whose claims are then to be adjusted, according to law, to the best of their judgment and understanding; and all parties in interest shall be entitled to subpoenas and other writs and papers, and the trial shall be conducted as in other civil cases.¹

85. The jury shall hear such lawful evidence touching the question of such damages as may be presented to them; and shall also, on request of a majority of the road commissioners or owners of lands whose damages are to be determined, in a body, visit and examine the proposed location, alteration, widening or vacation of such road, and the lands to be taken and affected

¹ § 84, act April 11, 1873.

thereby, and make a written verdict specifying the amount of damages, if any, which each such owner shall recover, and return the same to such justice, to be by him entered on his docket in the nature of a judgment, to be paid by such commissioners, together with the costs of such suit, in case they shall finally determine to establish, alter, widen or vacate such road; and the money therefor shall be paid by the town, out of the funds in the hands of the treasurer of the commissioners of highways, raised for road and bridge purposes: *Provided*, that in estimating damages the jury may consider the benefits conferred, or may disregard such benefits; but no benefits enjoyed in common by the owners of surrounding property shall be considered in estimating damages.¹

Verdict of Jury — Assessment of Road Damages.

State of Illinois, } ss. Before J. P.
— County. }

Verdict of jury in the matter of the assessment of damages consequent upon the of a road over lands described and owned as follows, viz.:

Description of Land.	Owned by
----------------------	----------

We, the jury summoned to assess damages in the above cause, having taken the oath required by law, and having heard the evidence presented, and having in a body visited and examined the location of the said road, the lands to be taken and affected by the proposed of the same, do assess the damages at what we deem just and right to each of said claimants (having first estimated and deducted the advantages and benefits), as follows, viz.:

To the said	the sum of	dollars:
to the said	the sum of	dollars:
to the said	the sum of	dollars:
to the said	the sum of	dollars:

The above verdict given under our hands, this
day of 18 . (Signatures of Six Jurymen.)

¹ § 85, act April 11, 1873.

86. *Provided*, that when there are several such owners the jury may assess the damages or one or more or all of them at the same time, or they may assess such damages at different times, or there may be different juries and trials at different times for different owners if any owner shall demand a separate trial; and any such assessment of damages may be continued from time to time for good cause, with the like effect as continuances in other cases before justices of the peace.¹

87. Within thirty days after the total amount of damages shall have been ascertained, either by release or agreement of the parties, or by assessment before a justice of the peace and a jury, in the manner hereinbefore provided, the commissioners shall hold a meeting to finally determine upon the laying out, altering, widening or vacation of such road, of which meeting said commissioners shall give public notice, by causing not less than three notices thereof to be posted in public places within the town, at least five days prior thereto.²

Commissioners' Notice for Final Meeting.

HIGHWAY NOTICE.—Notice is hereby given, That the undersigned, Commissioners of Highways of _____
in the County of _____ and State of Illinois, will meet
on the _____ day of _____ 18____, at
o'clock _____ M., at _____
to finally determine upon the _____ of a road described
as follows, to wit: Beginning

the petition for which road has been heretofore considered and
the prayer thereof granted, the route surveyed and the damages
consequent upon the _____ of the same having now
been ascertained.

_____,
_____,
_____.

Commissioners of Highways.

¹ § 86, act April 11, 1873. ² § 87, *id.*

88. In cases where the damages are not wholly released or agreed upon, and the commissioners shall be of the opinion that the damages assessed by the jury are manifestly too high, and that the payment of the same would be an unreasonable burden upon the taxpayers of the town, the commissioners may revoke all proceedings had upon the petition by a written order to that effect. And such revocation shall have the effect to annul all such proceedings and assessments, releases and agreements, in respect to damages growing out of the proceedings upon the petition.¹

89. In case the commissioners shall not revoke such prior proceedings they shall make an order, to be signed by them, declaring such road so altered, widened or laid out a public highway, and which order shall contain or have annexed thereto a definite description of the line of such road, together with a plat thereof. The commissioners shall, within ten days from the date of such order, cause the same, together with the report of the surveyor, the petition and releases or agreements in respect to damages, to be deposited and filed in the office of the town clerk, who shall note upon such order the date of such filing. It shall be the duty of such clerk, after the time for appeal to supervisors has expired, and in the case of such appeal, after the same shall have been determined, in case the prayer of the petition is granted, to record such order, together with the plat of the surveyor, in a proper book to be kept for that purpose.²

Order of Commissioners Vacating Road.

State of Illinois, }
 ——— County. } ss.

Town of

Whereas, on the _____ day of _____ 18 _____,
 we, the Commissioners of Highways of said town, received a petition in writing, of

¹ § 88, act April 11, 1873. ² § 89 *id.*

praying for the vacating of a road therein and hereinafter described, said petitioners being freeholders residing in said town within three miles of said road; and it appearing from legal evidence that a copy of said petition had been posted up in three of the most public places in said town, in the vicinity of said road, not less than 20 days before the day of 18 , we did, upon said day of 18 , fix upon the day of 18 , as the time when and as the place where we, the said Commissioners of Highways, would meet to examine the said road, and hear reasons for or against the vacating of the same, and gave ten days' notice of the time and place of such meeting by posting up notices thereof in three of the most public places in said town, in the vicinity of the said road; and having met at the time and place appointed

we personally examined the route of said road, to wit:

and having heard such reasons as were offered for and against the vacating of said road, and being of the opinion that such vacating was necessary and proper, and that the public interest would be promoted thereby, we decided that the prayer of said petitioners should be granted.

It is, therefore, hereby ordered and determined, and we do hereby order and determine, that said road be vacated and discontinued.

In witness whereof, we, the said Commissioners, have hereunto set our hands, this day of A. D. 18 .

_____,
_____,

Commissioners of Highways.

[Indorsement.]

Order of Commissioners Vacating Road.

Filed in the office of the Town Clerk this day of 18 .
_____, *Town Clerk.*

Recorded the day of 18 , in
page . _____, *Clerk.*

Order Laying Out, Altering or Widening Highway (where damages are assessed.)

State of Illinois, }
____ County. } ss.

Town of

Whereas, on the day of 18 ,
we, the Commissioners of Highways of said town, received a peti-

tion in writing, of _____ praying for the _____ of a road as therein and hereinafter described, said petitioners being freeholders residing in said town within three miles of the said _____; and it appearing from legal evidence that a copy of said petition had been posted up in three of the most public places in said town, in the vicinity of the road to be _____ not less than 20 days before the _____ day of _____ 18 , we did, upon said _____ day of _____ 18 , fix upon the _____ day of _____ 18 , as the time when and _____ as the place where we, the said Commissioners of Highways, would meet to examine the route of said road, and to hear reasons for and against the _____ of the same, and gave ten days' notice of the time and place of such meeting by posting up notices thereof in three of the most public places in said town, in the vicinity of said _____; and having met at the time and place appointed*

_____ and having examined the _____ in said petition described, and heard such reasons as were offered for and against the _____ of said road, we were of the opinion that the _____ of said road was necessary and proper and that the public interest would be promoted thereby. We, therefore, caused a survey and plat of said road to be made on the _____ day of _____ 18 , by _____ a competent Surveyor, which plat and survey were to us duly reported, and are hereunto appended and made a part of this order; and having ascertained the aggregate amount of damages to which the owner _____ of the land over which said road was to pass entitled, and said damages having been definitely fixed by†

we appointed the _____ day of _____ 18 (being within thirty days after the total amount of damages was ascertained), at _____ as the time and place to meet and finally determine upon the _____ of said road, of which meeting we gave public notice by causing three notices to be posted in public places in said town not less than five days

* If the meeting is adjourned from time to time, by public announcement or notices posted, note such adjournment in the space left at*

† State in this space the method or methods by which damages were fixed, as by agreement, release and assessment by jury. If appeal was taken from the decision of jury, and said appeal was decided before the making of this order, state also that fact.

prior thereto; and having met at the time and place appointed, and the aggregate amount of damages on account of the

of said road, to wit: the sum of

dollars and cents, appearing to be not more than reasonable compensation, and to have been fairly and legally assessed, and the payment thereof not an unreasonable burden upon the taxpayers of the town, and the damages awarded to

non-residents of the County, having been duly deposited with

as by law required ; and having made such changes in the route of said road between the termini thereof, upon the survey and plat as reported by the Surveyor, as in our judgment the convenience and interest of the public required, as will fully appear from the description and plat hereinafter contained, it was finally determined that the said road be

It is, therefore, hereby ordered and determined that the said road be and is hereby _____ as follows, to wit:

Beginning

As shown by the plat hereunto annexed, and as so

is declared a public highway of

feet wide, the line of said survey being the centre of said road.

In witness whereof, we, the said Commissioners of Highways,
have hereunto set our hands, this day of

A. D. 18 .

Commissioners of Highways.

PLAT REFERRED TO IN THE FOREGOING ORDER.

Township No. Range No. of Principal Meridian.
County of .

(See page 110, *supra*.)

[Indorsement.]

Order of Commissioners

road from _____ to _____ day of
 Filed in the office of the Town Clerk, this _____
 18 . _____, *Town Clerk.*
 Recorded in road book _____ page 18 .
 _____, *Town Clerk.*

Order Laying Out, Altering or Widening Highway (where damages are released or agreed upon).

State of Illinois, } ss.
 ——— County. }

Town of

Whereas, on the _____ day of _____ 18____,

we, the Commissioners of Highways of said town, received a petition in writing, of _____

praying for the _____ of a road as therein
and hereinafter described, said petitioners being freeholders resid-
ing in said town within three miles of the said _____; and
it appearing from legal evidence that a copy of said petition had
been posted up in three of the most public places in said town, in
the vicinity of the road to be _____ not less than
20 days before the _____ day of _____ 18____,
we did, upon said _____ day of _____ 18____, fix
upon the _____ day of _____ 18____, as the
time when and _____ as the place where we, the
said Commissioners of Highways, would meet to examine the
route of said road, and to hear reasons for and against the

of the same, and gave ten days' notice of the time and place of such meeting by posting up notices thereof in three of the most public places in said town, in the vicinity of said _____; and having met at the time and place appointed*

and having examined the
in said petition described, and heard such rea-
sons as were offered for and against the of said
road, we were of the opinion that the of
said road was necessary and proper, and that the public interest
would be promoted thereby. We, therefore, caused a survey and
plat of said road to be made on the day of
18 , by a competent Sur-
veyor, which plat and survey were to us duly reported, and are
hereunto appended and made a part of this order; and having
ascertained the aggregate amount of damages to which the
owner of the land over which said road was to pass
entitled, and said damages having been definitely fixed by

and having made such changes in the route of said road between the termini thereof, upon the survey and plat as reported by the

* If meeting is adjourned from time to time, by public announcement or notices posted, note such adjournment in space left at *

+ State in this space the facts as to release of or agreement for damages.

Surveyor, as in our judgment the convenience and interest of the public required, as will fully appear from the description and plat hereinafter contained, it was finally determined that the said road be

It is, therefore, hereby ordered and determined that the said road be and is hereby _____ as follows, to wit:

Beginning

As shown by the plat hereunto annexed, and as so

is declared a public highway of

feet wide, the line of said survey being the centre of said road.

In witness whereof, we, the said Commissioners of Highways,
have hereunto set our hands, this day of

A. D. 18 .

Digitized by Google

Commissioners of Highways.

PLAT REFERRED TO IN THE FOREGOING ORDER.

Township No.	Range No.	of	Principal Meridian.
	County of		.

(See page 110, *supra*.)

[Indorsement.]

Order of Commissioners

road from

to

Filed in the office of the Town Clerk, this

day of

18 .

— — —, *Town Clerk.*

Recorded in road book

page

18 .

— — —, *Town Clerk.*

90. In cases where the damages claimed by the land owners for the right of way is released, or is agreed upon between the land owners and the commissioners, the commissioners may, at their first meeting, or at an adjourned meeting, examine the route of the road, and cause a survey thereof to be made, and make their order establishing, altering, widening or vacating the road, according to the prayer of the petition, and return the same within the time and in the manner specified in this act.¹

¹ § 90, act April 11, 1873.

91. Any person or persons interested in the establishment, alteration, widening or vacation of any road in this state, are hereby authorized to offer inducements to the commissioners of highways, for the establishment, alteration, widening or vacation of any such road, by entering into contract with said commissioners, conditioned upon such establishment, alteration, widening or vacation, to pay money or any other valuable thing to the town, for the benefit of the road and bridge funds of the same ; or to perform any labor, or to construct any road, bridge or culvert on any road which said person or persons desire to have established, widened or altered. And such contracts, in writing, made with said commissioners, shall be deemed good and valid in law, and may be enforced by said commissioners or their successors in office, before any court having jurisdiction.¹

92. The record of the town clerk, or a certified copy of such record and papers, relating to the establishment, location, alteration, widening or vacation of any road, shall be *prima facie* evidence in all cases that all the necessary antecedent provisions had been complied with, and that the action of the commissioners of highways, or other persons and officers in regard thereto, were regular in all respects.²

93. Roads for private and public use of the width of three rods or less, may be laid out from one dwelling or plantation of an individual to any public road, or from one public road to another, or from one lot of land to another, or from a lot of land to the highway, on petition to the commissioners of highways, by any person directly interested. The commissioners, on receiving such petition, shall have power to lay out the

¹ § 91, act April 11, 1873. ² § 92, *id.*

road as asked for therein, to which end they shall proceed and examine into the merits of the case, and shall be governed in their proceedings by the rules and regulations prescribed in this act in relation to public roads. The jury shall consider the damages that may result to parties from said proposed road, and shall assess the damages to each individual owner of lands affected thereby. The amount of such damages shall be paid by the persons benefited thereby to the extent and in proportion that they are benefited, to be determined and declared by the jury. The remainder of the amount of damages over and above that to be paid by the parties as aforesaid, shall be paid by the land as in other cases. The amount of damages to be paid by individuals, shall be paid to the persons entitled thereto, before the road shall be opened for use. An appeal may be taken on the question of the propriety and necessity of such road as in other cases.¹

94. If such private road or cartway shall not be opened by the petitioners or their assigns within two years from the time of making the order for the location of the same, such order shall be regarded as rescinded.²

95. When such private road or cartway is proposed to pass over inclosed lands, the owners of such lands shall have a reasonable time, not exceeding eight months, to be designated by the commissioners of highways, to harvest crops and remove fences which may be on such land before such road or cartway shall be opened.³

96. The commissioners of highways may, in their discretion, pay persons who live on or have private roads which are used by the public, for work done on

¹ § 93, act April 11, 1873. ² § 94, *id.* ³ § 95, *id.*

such roads ; but in no case shall they be allowed more than the amount of their road tax for the year in which the work is done.¹

97. Public roads may be established, altered, widened or vacated on township or county lines, in the same manner as other public roads, except that in such case a copy of the petition shall be posted up in and presented to the commissioners of highways of each town interested ; whereupon it shall be the duty of the commissioners of highways of the several towns to meet and act as one body, in the same time and manner as in other cases, in considering the petition, viewing the premises, adjusting damages and making all orders in reference to such proposed road, alteration, widening or vacation, and a majority of all such commissioners must concur in all such orders ; and a copy of all final orders and plats and papers shall be filed and recorded in each of the counties and towns interested.²

98. The commissioners of highways shall also, in case a new road is established, allot to each of such towns the part of such road which such town shall open and keep in repair, and the part so allotted shall be considered as wholly belonging to such town. They shall also divide the expenses and damages which may accrue from such location, widening or alteration, and if they cannot agree, they shall refer the matter to three disinterested freeholders, as arbitrators, whose decision shall be final.³

99. Any person or persons interested in the decision of the commissioners of highways, in determining to or in refusing to lay out, alter, widen or vacate any road, or revoking any previous order or decision relative to any road, or from the verdict of any jury in assessing damages in opening, [widening,] altering or vacating

¹ § 96, act April 11, 1873. ² § 97, *id.* ³ § 98, *id.*

any road, may appeal from such decision to three supervisors of the county, outside of the town in which such road or proposed road is located, by giving a written notice of such appeal to the said commissioners of highways, and to at least three of the petitioners, and also to the same parties, a notice when and where such appeal will be tried, at least three days before such trial, within ten days after such decision has been filed in the office of the proper clerk; and shall also present a written petition to some justice of the peace of the county, asking for an appeal, and stating on what grounds such appeal is taken.¹

Notice to Commissioners of Appeal.

To _____ *and* _____ *Commissioners of Highways of the*
town of _____ *of the County of* _____ *:*
Sirs: Please take notice, That _____ have appealed from
your decision made on the _____ day of _____
A. D. 18 _____, _____ a highway, as follows, to wit:

and that	Supervisor of the town of
	Supervisor of the town of
and	Supervisor of the town of

¹ § 99, act April 11, 1873.

Upon a road appeal to three supervisors, it becomes the duty of the owner of the land affected by the location of the road to take notice of and follow up the appeal.

Wells v. Hicks, 27 Ill. 343.

It is sufficient, if the paper intended as an appeal from the order of the commissioners of highways to the supervisors under the road law, states the order appealed from, the time when the order was filed, and the ground upon which the appeal is taken, and signed by the party appealing, and filed by him within the required time, together with the bond of the party, with sureties, to be approved by the clerk.

Comm'rs of Highways *v.* Supervisors, 53 Ill. 320.

GROUNDS OF APPEAL.—The statute does not require the grounds of such an appeal to be stated in the notices issued to the commissioners and petitioners, but only in the paper filed with the town clerk; and if the clerk, in issuing the notices, undertakes to set forth therein the grounds of the appeal, and misstates them, while it may be good reason for an application to the supervisors to postpone the hearing, it will not affect their jurisdiction over the subject matter of the appeal as set forth in the paper filed with the town clerk.—*Id.*

in the County aforesaid, have been duly summoned by
 Esq., Justice of the Peace, and will meet at the
 in the town of aforesaid,
 on the day of A. D. 18 , at
 o'clock M., for the purpose of hearing and determining said
 appeal; which appeal is taken for the purpose of
 the decision of said Commissioners in the said
 road; at which time and place you may appear and show cause,
 if any you have, why said decision should not be wholly reversed,
 and

Dated at the day of A. D. 18 .
 Yours truly, _____

State of Illinois, }
 ——— County. } ss.

being duly sworn, doth depose
 and say: That he did, on the day of
 A. D. 18 , make service of a notice in writing, of which the with-
 in is a true copy, upon and
 Commissioners of Highways of the town
 of in said County, by delivering one to each of
 said Commissioners. _____

Subscribed and sworn to before me this day of
 A. D. 18 . _____

[Indorsement.]

Notice of Appeal to Commissioners.

Notice to Commissioners of Highways of
 in the matter of the appeal of

Notice to Petitioners of Appeal.

To and three of the petitioners who petitioned
 for the of the road hereinafter described:

Sirs: Please take notice, That I have appealed from the decision
 of the Commissioners of Highways of the town of
 made on the day of A. D. 18 ,
 a highway, as follows, to wit:

and that Supervisor of the town of
 Supervisor of the town of
 and Supervisor of the town of
 in the County of aforesaid, have been duly sum-
 moned by Esq., Justice of the Peace, and will

meet at the _____ in the town of _____ aforesaid,
 on the _____ day of _____ A. D. 18 __, at
 o'clock _____ M., for the purpose of hearing and determining said
 appeal; which appeal is taken for the purpose of
 the decision of said Commissioners in _____ the said
 road; at which time and place you may appear and show cause,
 if any you have, why said decision should not be wholly reversed,
 and _____

Dated at _____ the _____ day of _____ A. D. 18 __.

Yours truly, _____

State of Illinois, }
 _____ County. } ss.

being duly sworn, doth depose

and say: That he did, on the _____ day of _____
 A. D. 18 __, make service of a notice in writing, of which the with-
 in is a true copy, upon _____ and
 _____ being three of the petitioners who peti-
 tioned for the _____ of the said road, herein described,
 by delivering one to each of said petitioners.

Subscribed and sworn to before me, this _____ day of _____
 A. D. 18 __. _____

[Indorsement.]

Notice of Appeal to Three Petitioners.

Notice to _____ in the matter of the appeal of _____

100. It shall be the duty of the justice of the peace to cause to be summoned three supervisors of the county to hear such appeal; and said supervisors shall fix upon a time and place when said appeal will be heard by them; and upon such appeal the said supervisors shall have the same power and authority that is by this act conferred on the commissioners of highways, not only in regard to the laying out, altering, widening or vacating any road, but shall have the same power to cause a jury to be called to assess damages, whenever the state of the proceedings requires it, and the supervisors cannot agree with the owners of land in regard to the same.¹

¹ § 100, act April 11, 1873.

101. And they shall make a report of their proceedings and decision in the case, and in like manner that is by this act required by the highway commissioners, and shall be entitled to the same compensation; and their decision shall be final in regard to laying out, altering, widening or vacating such road, or in refusing to do the same, for one year after such decision.¹

Order of Supervisors on Road Appeal—Appeal from Decision Refusing Road.

State of Illinois, }
 ——— County. } ss.

Whereas, on the _____ day of _____ A. D. 18 __, _____ presented to _____ Esq., a Justice of the Peace of the County of _____ a petition, asking for an appeal from the determination of the Commissioners of Highways of said town of _____ in refusing to _____ a highway, which refusal appears indorsed on the petition for said road, returned and filed in the office of the County Clerk of said County, on the _____ day of _____ A. D. 18 __. And the said Justice of the Peace having summoned us, the undersigned, three Supervisors of said County, for the hearing of said appeal, and we, having met on the _____

¹ § 101, act April 11, 1873.

UPON AN APPEAL TO THE BOARD OF SUPERVISORS from the decision of the commissioners of highways, as to the laying out of a road, it will be sufficient if they examine that portion of the road against which the objections are urged.

Comm'rs of Sonora v. Supervisors of, etc., 27 Ill. 141.

AN APPEAL TO SUPERVISORS, in relation to laying out of roads, need not be addressed to them by name; if it is so addressed, the names may be regarded as surplusage.

The People ex rel. v. Smith, 15 Ill. 326.

TIME OF HEARING AN APPEAL.—The supervisors on a road appeal should not agree upon the time when they will consider a road appeal, until thirty days have expired after the filing of the order in the office of the town clerk from which the appeal is taken.

Corley v. Kennedy, 28 Ill. 143.

NOTICE.—Supervisors in the matter of opening a road, when they dismiss an appeal and adjourn, without any intention of further action, cannot resume the subject, unless notice of the time and place of a future meeting be served on the commissioners of highways, and on the three petitioners before served. Without this notice, the action of the supervisors is void.

Keech v. The People, 22 Ill. 478.

day of _____ A. D. 18 __, at _____ o'clock _____ M.
at*

to hear the proofs and allegations of the parties, being the time and place fixed upon by us, when and where we would meet to consider such appeal; and it appearing that said Commissioners of Highways and three of the petitioners in said case had been duly notified of the time and place of such hearing, as required by law, did proceed to consider said appeal; and having heard the proofs and allegations of the parties, and such reasons as were offered for and against the _____ of said road, we were of the opinion that the _____ of said road was necessary and proper, and that the public interest will be promoted thereby, and that the decision of the said Commissioners should therefore be reversed.

We therefore caused a survey and plat of said road to be made on the _____ day of _____ A. D. 18 __, by a competent Surveyor, which plat and survey were to us duly reported, and are hereunto appended and made a part of this order; and having ascertained the aggregate amount of damages to which the owner _____ of the land over which said road was to pass _____ entitled, and said damages having been definitely fixed by† we appointed the _____ day of _____ 18 __, (being within thirty days after the total amount of damages was ascertained) at _____ as the time and place to meet and finally determine upon the _____ of said road, of which meeting we gave public notice by causing three notices to be posted in public places in said town not less than five days prior thereto; and having met at the time and place appointed, and the aggregate amount of damages on account of the _____ of said road, to wit: the sum of _____ dollars and _____ cents, appearing to be not more than reasonable compensation, and to have been fairly and legally assessed, and the payment thereof not an unreasonable burden upon the taxpayers of the town, and the damages awarded to non-residents of the County, having been duly deposited with _____ as by law required; and having made such changes in the route of said road between the termini there-

* If meeting is adjourned from time to time, by public announcement or notices posted, note such adjournment in space left at *

† State in this space the method or methods by which damages were fixed, as by agreement, release and assessment by jury. If appeal was taken from the decision of jury, and said appeal was decided before the making of this order, state also that fact.

of, upon the survey and plat as reported by the Surveyor, as in our judgment the convenience and interest of the public required, as will fully appear from the description and plat hereinafter contained, it was finally determined that the said road be

It is, therefore, hereby ordered and determined that the said road be and is hereby as follows, to wit:

Beginning

As shown by the plat hereunto annexed, and as so is declared a public highway of feet wide, the line of said survey being the centre of said road.

In witness whereof, We, the said Supervisors, have hereunto set our hands, this day of A. D. 18 .

_____,
Supervisor of the town of .

_____,
Supervisor of the town of .

_____,
Supervisor of the town of .

PLAT REFERRED TO IN THE FOREGOING ORDER.

Township No. Range No. of Principal Meridian
County of .

(See page , supra.)

[Indorsement.]

Order of Commissioners.

road from to
Filed in the office of the Town Clerk this day of
18 , _____, Town Clerk.
Recorded in road book page 18 .
_____, Town Clerk.

*Order of Supervisors on Road Appeal—Appeal from Decision
in Favor of Road.*

State of Illinois, }
_____ County. } ss.

Whereas, on the day of A. D. 18 ,
presented to Esq.,
a Justice of the Peace of the County of a petition
asking for an appeal from the order and determination of the
Commissioners of Highways of the town of in said
County, in a highway, as contained in the order
of said Commissioners, deposited with the Town Clerk, and filed
in his office, on the day of A. D. 18 ,
and the said Justice of the Peace having summoned us, the under-
signed, three Supervisors of said County, for the hearing of said

appeal, and we having met on the _____ day of
 A. D. 18____, at _____ o'clock _____ M., at
 _____ to hear the proofs and allegation of the parties,
 being the time and place fixed upon by us, when and where we
 would meet to consider such appeal; and it appearing that said
 Commissioners of Highways and three of the petitioners in said
 case had been duly notified of the time and place of such hearing
 as required by law, did proceed to hear the proofs and allegations
 of the parties, and to consider said appeal; and we, being fully
 advised in the premises, do adjudge, order and determine that
 the order and determination of said Commissioners of Highways
 be and the same is

In witness whereof, we have hereunto set our hands, this
 _____ day of _____ A. D. 18____.

Supervisor of the town of _____ .

Supervisor of the town of _____ .

Supervisor of the town of _____ .

Fees of Supervisors, _____ day eac _____ dollars.

[Indorsement.]

Order of Supervisors in Case of Road Appeal.

In the matter of the appeal of _____ made the
 day of _____ A. D. 18____.

102. Any parties taking an appeal from the award of the decision of the highway commissioners, or the verdict of the jury, shall pay the cost of such appeal, in case the award or the decision of the highway commissioners, or the verdict of a jury, is in all things sustained; and shall file a sufficient bond with the justice of the peace or town clerk before taking such appeal, guaranteeing such payment in such case.¹

¹ § 102, act April 11, 1873.

THE OBJECTION THAT THE APPEAL BOND given on appeal to three supervisors does not recite correctly the order of the commissioners, should be made before the supervisors.

Town of Winfield v. Moffatt, 42 Ill. 47.

APPEAL BOND.—Leave to file a more perfect bond to be given.—*Id.*

THE OBJECTION, THAT THE PARTIES APPEALING do not appear to be the owners or agents of the land, should be made before the three supervisors, so as to give opportunity to supply the proof.

Green v. Green, 34 Ill. 320.

Road Appeal Bond to Three Supervisors—Appeal from Decision of Commissioners as to Road.

Know all men by these presents, That we
of the town of _____ in the County of _____
and State of Illinois, are held and firmly bound unto
_____ in the penal sum of _____ dollars, for the
payment of which, well and truly to be made, we bind ourselves,
our heirs, executors and administrators, jointly, severally and
firmly by these presents.

Signed with our hands and sealed with our seals, this
day of _____ 18 ____.

The condition of the above obligation is such, That whereas,
the above bounden _____ ha _____ appealed from the
decision of the Commissioners of Highways of the said town of _____
in _____ a highway from _____
by their order bearing date the _____ day of _____
A. D. 18 ____.

Now, therefore, if the above bounden _____ shall
promptly pay, or cause to be paid, all costs arising from said
appeal, in case the determination of the Commissioners of High-
ways in the premises shall be in all things sustained, then the
above obligation to be void, otherwise to remain in full force and
virtue.

_____, [SEAL.]

_____, [SEAL.]

_____, [SEAL.]

Signed, sealed and delivered in presence of

The above bond of _____ of the town of _____
Illinois, approved by me this _____ day of _____ A. D. 18 ____.
_____, *Town Clerk.*

[Indorsement.]

Road Appeal Bond to Supervisors.

Bond of _____

Securities.

Filed this _____ day of _____ A. D. 18 ____, in the office
of the Town Clerk of the town of _____ . _____, *Town Clerk.*

103. The decision of a majority of the supervisors
in any appeal case shall be taken as the decision of
said supervisors.¹

104. When the commissioners of highways of one

¹ § 103, act April 11, 1873.

town disagree with the commissioners of highways of an adjoining town in regard to the laying out of a new road, or the alteration, widening or vacation of an old road, on any county or town line, appeals may be taken from such decision in the same manner as set forth in section ninety-nine of this act: *Provided*, that when such decision is in regard to a road on a county line, two supervisors and one commissioner of highways shall be selected from one county, and two commissioners of highways and one supervisor shall be selected from the other. The county from which the two supervisors shall be selected shall be determined by the party or parties taking the appeal, and the justice of the peace shall issue his summons accordingly.¹

105. All roads heretofore laid out upon town or county lines, shall be divided, allotted and kept in repair in the manner as hereinbefore directed. Any public road that is or shall hereafter be laid out on a county or town line, shall be held to be a road on a

¹ § 104, act April 11, 1873.

The statute allows an appeal to be taken from the decision of the commissioners of highways to supervisors, when a highway, to be laid out, is on the line between two towns.

Warne v. Baker, 24 Ill. 351.

ADJOINING A TOWN LINE BUT WHOLLY WITHIN ONE TOWN.—A road may be thus located by the commissioners without joint action with the commissioners of the adjoining town.

Mack v. Comm'rs of Highways, 41 Ill. 378.

WHEN A ROAD IS LOCATED ON a dividing line between townships, the commissioners of the towns must create road districts, and allot the expense of keeping up the road among the districts as nearly equal as possible, giving each town an equal number of districts, each road district to be attached to the town in which it lies, and a record of the partition and allotment to be made in the office of the town clerks of each of the respective towns. Without such an allotment the road cannot be opened, neither of the towns having power to act.

Keech v. The People, 22 Ill. 478.

THE COMMISSIONERS OF ONE TOWN have the right to locate a road wholly within their town, though adjoining the town line, without joint action with the commissioners of the adjoining town.

Mack v. Comm'rs of Highways, 41 Ill. 378.

county or town line, although, owing to the topography of the ground along said county or town line, or at the crossing of any stream of water, the proper authorities, in establishing or locating such road, may have located a portion of the same to one side of such county or town line.¹

¹ § 105, act April 11, 1873.

THE PRESIDENT AND TRUSTEES of a town incorporated under the general law have authority to open streets; and a party aggrieved with the assessment of damages need not apply to the president of the board to set aside the inquisition, but may appeal to the circuit court as soon as ten days shall have expired; and the circuit court can only determine the amount of damages sustained by opening the street, or reverse the proceedings if irregular. It cannot inquire into the expediency of opening the street.

Dunlap v. Trustees etc. of Mt. Sterling, 14 Ill. 251.

In a proceeding to open a street in the city of Peoria, the owner of property offered to prove before the county court, which was to confirm the report of commissioners, that the commissioners had prejudged his case, and that proof before them by him would have been useless. *Held*, that the evidence should have been admitted, as well as affidavits, showing the value of the property, its condition, and the benefits and injuries to it from opening the street.

Cole v. City of Peoria, 18 Ill. 301.

When the road established from Peoria to Rock Island, by the act of Feb. 11, 1853, was viewed, located, and reported by commissioners, the damages assessed for that purpose became payable absolutely, and the county court could not lawfully withhold them.

County of Peoria v. Harvey, 18 Ill. 364.

VACATING OF.—The owner of lots abutting on only one side of a street cannot vacate it.

Leech v. Waugh, 24 Ill. 228.

VACATION OF, LOCATED BY TOWNSHIP AUTHORITIES.—A public road located by highway commissioners must be opened in five years, or the right of way will revert to the owner of the land, and the road become vacated. To avoid the vacation of a road thus laid out and located, it is necessary that it should be opened its entire length within five years. It is not sufficient to open only a part of such road.

Green v. Green, 34 Ill. 320.

INJUNCTION, TO STAY THE OPENING OF SUCH A ROAD.—If the town authorities fail to procure the right of way, and fail to provide means to pay for the same, until the day before the five years expire, and it is apparent that the road cannot be opened within the time, a court of equity may restrain the town officers from opening a small portion of the road before the time expires.—*Id.*

Equity will not permit a road to be established through a township simply for the purpose of procuring a road for a part of the distance. To permit such proceedings for that purpose would operate unjustly, if not as a fraud upon property holders.—*Id.*

106. Roads may be laid out and opened upon the line between this and any adjoining state, as provided in the preceding sections, whenever the laws of such adjoining state shall be applicable.¹

107. Bridges over streams which divide towns or counties, and bridges over streams on roads on county or town lines, shall be built and repaired at the equal expense of such towns or counties: *Provided*, that for the building and maintaining of bridges over streams near county or town lines, in which both are equally interested, the expense of building and maintaining any such bridges shall be borne equally by both counties or towns.²

108. For the purpose of building or keeping in repair such bridge or bridges, it shall be lawful for the commissioners of highways of such adjoining towns or counties to enter joint contracts, and such contracts may be enforced, in law or equity, against such commissioners jointly, the same as if entered into by individuals, and such commissioners may be proceeded against jointly, by any parties interested in such bridge or bridges, for any neglect of duty in reference to such bridge or bridges, or for any damages growing out of such neglect.³

109. If the commissioners of highways of either of such towns, after reasonable notice in writing from the commissioners of highways of any other such towns, shall neglect or refuse to build or repair any such bridge, when any contract or agreement has been made in regard to the same, it shall be lawful for the commissioners so giving notice to build or repair the same, and to recover by suit one-half (or such amount as shall have been agreed upon) of the expense of so building or repairing such bridge, with costs of suit

¹ § 106, act April 11, 1873. ² § 107, *id.* ³ § 108, *id.*

and interest from the time of the completion thereof, from the commissioners so neglecting or refusing.¹

110. Any judgment so recovered against the commissioners of highways, or either of such towns, shall be a charge on such town, unless the court shall certify that the neglect or refusal of such commissioners was willful or malicious, in which case only such commissioners shall be personally liable for such judgment, and the same may be enforced against them in their personal and individual capacity.²

111. When it shall be necessary to build, construct or repair any bridge or road in any town, which would be an unreasonable burden to the same, the cost of which will be more than can be raised in one year by ordinary road taxes in such town, the commissioners of highways shall present a petition to the county board of the county in which such town is situated, praying for an appropriation from the county treasury to aid in the building, constructing or repairing of such bridge or road, and such county board may, a majority of all the members elect voting for the same, make an appropriation of so much for that purpose as, in their judgment, the nature of the case requires and the funds of the county will justify; said appropriation to be expended under the supervision of an authorized agent or agents of the county, if the county board shall so order.³

112. When it shall be necessary to build a bridge in any town which would require a larger sum of money to complete than is authorized to be raised by taxation under the constitution upon a single year's assessment, the commissioners of highways shall petition the supervisor of the town to call a special town meeting to vote on the proposition "to borrow money to build a bridge,"

¹ § 109, act April 11, 1873. ² § 110, *id.* ³ § 111, *id.*

which said petition shall be signed by said commissioners in their official capacity, and by at least twenty-five freeholders of such town; and thereupon said petition shall be filed in the office of the town clerk of such town. Upon the filing of said petition the supervisor shall order the town clerk, by an instrument in writing, to be signed by him, to post up in four of the most public places in said town, notices of such special town meeting; which notice shall state the object, time and place of meeting, and the manner in which the voting is to be had, which shall be invariably by ballot, and shall be "to borrow money to build a bridge," when the voter desires to vote in favor of that proposition, and "against the proposition to borrow money to build a bridge," when the voter desires to vote against said proposition. The special town meeting shall be held and returns thereof made in the same manner as other special town meetings are now or may hereafter be provided by law; and if it shall appear that a majority of the legal voters voting at said election shall be in favor of said proposition, the supervisor and town clerk, acting under the direction of the commissioners of highways of said town, shall issue from time to time, as the work progresses, a sufficient amount in the aggregate of the bonds of said town for the purpose of building such bridge; such bonds to be of such denominations, bear such rate of interest, not exceeding ten per cent., upon such time, and be disposed of as the necessities and conveniences of said town officers require: *Provided*, that said bonds shall not be sold or disposed of for less than their par value, and such town shall provide for the payment of such bonds and the interest thereon by appropriate taxation.¹

¹ § 112, act April 11, 1873.

113. Upon the petition of twelve legal voters it shall be the duty of the commissioners of highways of each town, within a reasonable time, to employ a competent surveyor, and have any road or roads designated in such petition in their several towns re-surveyed, and plats thereof made, which plats and surveys shall be by them filed for record in the office of the town clerk: *Provided*, that this section shall not apply where the same has been already done, unless the exact location of such road is uncertain.¹

114. The establishment of a new road on the route of a road already established according to law, shall not vacate the road previously established, unless such vacation is prayed for in the petition, and so declared in the order establishing the new road.²

115. The commissioners of highways of the several towns are hereby authorized to contract for the building and repairing of bridges in their respective towns, and they may let such contracts by a public letting to the lowest responsible bidder, upon proper notice being given by posting copies of such notice in at least three public places in their town, not less than ten days before the time of such public letting; or if they deem it to be to the interest of their town, they may, to an amount not exceeding twenty-five dollars, privately contract with persons, as they shall deem best, for putting bridges in good repair; but in no case shall such contracts exonerate such commissioners from liability for failure to keep such bridges in repair.³

116. *Provided*, that the collector of taxes shall receive from any taxpayer, in payment of said taxpayer's road and bridge tax, any order of the commissioners of highways, on their treasurer, for work done on or material furnished for the construction or repairs

¹ § 113, act April 11, 1873. ² § 114, *id.* ³ § 115, *id.*

of the highways or bridges, in any sum not to exceed the amount of such person's road and bridge tax then due.¹

117. Whenever a public road is ordered to be established or altered, according to the provisions of this act, which road shall pass through or on inclosed land, the commissioners of highways shall give the owner or occupant of such land sixty days' notice, in writing, to remove his fences. If such owner or occupant does not remove his fences within sixty days after such notice, the commissioners shall cause the same to be removed, and direct the road to be opened and worked; and such owner shall forfeit to such commissioners the sum of one dollar for every day he shall permit his fences to remain after the expiration of said sixty days, and shall pay all necessary cost of removal, to be collected by said commissioners before any justice of the peace having jurisdiction.²

Notice for Removal of Fences.

To Esq.,

Sir: You will take notice that the Commissioners of Highways of the town of _____ in the County of _____ and State of Illinois, have laid out a public highway, agreeably to the order of said Commissioners, bearing date the _____ day of _____ A. D. 18____, a copy of which is hereunto annexed, which highway passes through certain inclosed lands _____ by you, being known and described as follows, to wit:

You are, therefore, hereby notified and required to remove your fences from within the bounds of said highway, within sixty days after the service of this notice.

Dated at this day of 18 .

Commissioners of Highways.

¹ § 116, act April 11, 1873. ² § 117, *id.*

² § 117, *id.*

118. The commissioners of highways shall receive for their services the sum of one dollar and fifty cents per day for each day necessarily employed in the performance of their duties, the same to be audited by the town auditors and paid out of the town funds.¹

119. All highways laid out by order of the commissioners or supervisors, on appeal, shall be opened within five years from the time of laying out the same. If not opened within the time aforesaid, the same shall be deemed to be vacated.²

120. The highway commissioners of each town shall, annually, ascertain, as near as practicable, how much money must be raised by tax on real and personal property for the making and repairing of bridges, the payment of damages by reason of the opening, altering and laying out of new roads, the purchase of the necessary tools, implements and machinery for working roads; the purchase of the necessary material for building or repairing roads and bridges, the pay of the overseers of highways during the ensuing year; and shall levy a tax on all the real and personal property in said town, not exceeding forty cents on the one hundred dollars; and they shall give to the supervisor of the township, and in Cook county to the county board, a statement of the amount necessary to be raised, and the rate per cent. of taxation, signed by said commissioners, or a majority of them, on or before the Tuesday next preceding the annual September meeting of the board of supervisors, or the county board in Cook county, who shall cause the same to be submitted to said board for their action at such September meeting of said board: *Provided*, that if the commissioners of highways, or any three legal voters, shall give

¹ § 118, act April 11, 1873. ² § 119, *id.*

notice, by posting notices in at least three of the most public places of the town at least ten days before the annual town meeting, that a larger amount of money will be required for the purpose of constructing or repairing roads or bridges in their town than can be realized from the real and personal property tax authorized by law to be assessed by the commissioners, the legal voters present at such meeting may authorize an additional amount to be raised by tax, not exceeding sixty cents on each one hundred dollars' valuation, and said board shall cause the same to be extended on the tax books.¹

NOTICE OF APPLICATION FOR ADDITIONAL APPROPRIATION.

Notice is hereby given to the electors of the town of _____ in the County of _____, That the Commissioners of Highways of said town are of opinion that the sum of _____

dollars, as now allowed by law, will be insufficient to pay the expenses actually necessary for the improvement of roads and bridges in said town, and that the additional sum of _____

dollars is necessary to make a bridge across the _____ creek near _____ (or to repair the bridge, etc., or to improve the road at, etc.); and that we, the undersigned, Commissioners of Highways of said town, shall, at the next annual town meeting of said town, to be held at _____

on the _____ day of _____ next, apply in open town meeting for a vote authorizing the said sum of _____ to be raised for the purpose aforesaid.

Dated at _____ this _____ day of _____ 18 ____.

121. According to the amount certified as aforesaid, the county clerk, when making out the tax books for state and county taxes for the collector, shall extend the necessary tax in a separate column against each taxpayer's name, or taxable property, as other taxes are extended, which shall be collected the same as state and county taxes.²

¹ § 120, act April 11, 1873. ² § 121, *id.*

122. It shall be the duty of the county clerk to make out and deliver, on demand, to the treasurer of the commissioners of highways, a certificate of the aggregate amount of tax so levied and placed among the tax books.¹

123. The tax so collected shall be paid to the treasurer of the commissioners of highways, except as provided in section sixteen (16) of this act, by the collector, as fast as the same is collected, except such rate per cent. as shall be allowed for collecting the same.²

124. The commissioners of highways shall furnish to the clerk of the county court, previous to the first day of October in each year, a list of taxpayers (alphabetically arranged) of each district.³

125. Any tax or moneys collected by the township or county collectors of the various counties for road and bridge purposes under the provisions of an act entitled "An act in regard to roads and bridges," approved April 10, 1872, shall be paid by said collectors to the treasurer of commissioners of highways, and be by said commissioners, after reserving sufficient to pay for the purchase of implements and the payment of damages, and the pay of the overseers, distributed to the overseers of highways of the various road districts from which it was collected, as near as may be. Said moneys shall be used by said overseers in improving the roads and bridges in their respective towns.⁴

126. That an act entitled "An act in regard to roads and bridges," approved April 10, 1872, and in force August 15, 1872, so far as the same relates to counties under township organization, and also all other acts or parts of acts inconsistent herewith, be and the same are hereby repealed: *Provided*, that the

¹ § 122, act April 11, 1873. ² § 123, *id.* ³ § 124, *id.* ⁴ § 125, *id.*

repeal of said act shall not affect any suit or proceeding pending, or impair any right existing at the time this act shall take effect.¹

127. Whereas an emergency exists; therefore this act shall take effect and be in force from and after its passage.²

SECTION IV.

STREETS AND ALLEYS.

1. A street is a highway in a city or village; its uses; nuisances.
2. Special assessments upon lots for the expenses of opening, widening, improving and the like.
3. The statutes and decisions in Illinois.
4. The right of eminent domain.

1. A street is a public thoroughfare or highway in a city or village.³ A street, besides its use as a highway for travel, may be used for the accommodation of drains, sewers, aqueducts, water and gas pipes, lines of telegraph, and for other purposes conducive to the general police, sanitary and business interests of a city.⁴ A street may be used by individuals for the lading and unlading of carriages, for the temporary deposit of movables or of materials and scaffoldings for building or repairing, provided such use shall not unreasonably abridge or incommode its primary use for travel.⁵ So a sidewalk which is part of a street may be excavated for a cellar, pierced by an aperture for the admission of light, or overhung by an awning. But if the highway becomes more unsafe, and a passenger is injured by reason thereof, the individual so using the street will

¹ § 126, act April 11, 1873. ² § 127, *id.*

³ 4 Serg. & R. Penn. 106; 11 Barb. N. Y. 399.

⁴ *Aurora v. Reed*, 58 Ill. 29; 10 Barb. N. Y. 26, 360; 15 *id.* 210; 17 *id.* 435; 2 R. I. 15.

⁵ 6 East. 427; 3 Campb. 230; *Hawkins*, Pl. Cr. c. 76. s. 49; 4 Ad. & E. 405; 4 Iowa 199; 1 Den. N. Y. 524; 1 Serg. & R. Penn. 219.

be responsible for the damages;¹ but an individual has no right to have an auction in a street,² or to keep a crowd of carriages standing therein,³ or to attract a disorderly crowd to witness a caricature in a shop window.⁴ Such an act constitutes a nuisance.⁵ The owners of lands adjoining a street are not entitled to compensation for damages occasioned by a change of grade or other lawful alteration of the street,⁶ unless such damages result from a want of due skill and care, or an abuse of authority.⁷

2. Under the statutes of several of the states, assessments are levied upon the owners of lots specially benefited by opening, widening or improving streets, to defray the expense thereof; and such assessments have been adjudged to be a constitutional exercise of the taxing power.⁸

3. Under the statute in Illinois,⁹ towns are platted and laid out, and the land intended for streets, alleys, ways, commons or other public uses, in any town or city, or addition thereto, thereby transferred to the corporate authorities in trust.¹⁰ A proprietor of land who lays it out under the statute into town or city lots, vests the legal title to the lands embraced by streets in the corporation of the town or city, for the use and benefit of the public; it is a solemn dedication of the ground to the corporation, to be held in trust for the uses and purposes of the public.¹¹

¹ 18 N. Y. 79-84; 4 Carr. & P. 262; 23 Wend. N. Y. 446; 3 Cush. Mass. 174; 6 *id.* 524; 13 Mete. Mass. 299.

² 13 Serg. & R. Penn. 403.

³ 3 Campb. 230.

⁴ 6 Carr. & P. 636.

⁵ Angell, High. c. 6.

⁶ *Aurora v. Reed*, 58 Ill. 29; 4 Term, 794; 2 Barn. & Ald. 403; 1 Pick. Mass. 417; 4 N. Y. 195; 18 Penn. St. 87; 14 Mo. 20; 2 R. I. 154; 6 Wheat. 593; 20 How. 135.

⁷ *Aurora v. Reed*, 58 Ill. 29; 3 Wils. 461; 5 Barn. & Ald. 837; 1 Sandf. N. Y. 22; 16 N. Y. 158, and note.

⁸ See Ill. Digest, Chicago; 4 N. Y. 419; 8 Wend. N. Y. 85; 18 Penn. St. 26; 21 *id.* 147; 3 Watts, Penn. 293; 23 Conn. 189; 5 Gill, Md. 383; 27 Mo. 209; 4 R. I. 230; Angell, Highways, c. 4.

⁹ §§ 17-27, Div. I, c. 25, R. S. 1845.

¹⁰ 1 Gross 102, 103.

¹¹ *Canal Trustees v. Havens*, 11 Ill. 554.

SURVEYOR'S CERTIFICATE.¹

State of Illinois, }
 ——— County. } ss.

This is to certify that at the request of A B, the owner of the land described as follows, to-wit: (*here describe the land with legal certainty*) at _____ in said County, I have this day surveyed and platted (*so much of*) the said land as is shown by the above and foregoing plat or map into blocks and lots, streets and alleys *and public park*, as designated on said map.

Dated _____ A. D. 18 ____ .

C D,
County Surveyor.

PROPRIETOR'S ACKNOWLEDGMENT.¹

State of Illinois, }
 ——— County. } ss.

Personally appeared this day before me, the undersigned, a Justice of the Peace of said county, A B, to me personally known to be the same person named in the foregoing certificate of C D, and acknowledged the within map or plat of land to be his free act and deed for the uses and purposes therein mentioned and designated.

Dated _____ A. D. 18 ____ .

L M,
J. P.²

A map is not essential; if the owners agree upon a place, make a survey and lay off ground for public use as a street or landing, and make sales in reference thereto, it amounts to a dedication of such ground to the public.³ No particular form is requisite to establish a grant by dedication; it is purely a question of intention.⁴ Parol dedications are good.⁵ They may be manifested by consent or acquiescence,⁶ and may be presumed, *e. g.* where the public have uninterruptedly used a road for twenty years,⁷ and are questions of fact

¹ §§ 17-27, c. 25, Div. I; c. 25 R. S. 1845.

² It seems a notary is not authorized to take this acknowledgment. See § 21 *id.*; 1 Gross 102; but see § 16, c. 24, R. S. 1845; 1 Gross 86, 87.

³ *Godfrey v. The City of Alton*, 12 Ill. 30.

⁴ *Marcy v. Taylor*, 19 Ill. 634; *Wagh v. Leech*, 28 Ill. 488; *Rees v. Chicago*, 38 Ill. 322.

⁵ *Warren v. The Town of Jacksonville*, 15 Ill. 236.

⁶ *Dimon v. The People*, 17 Ill. 422; *Marcy v. Taylor*, 19 Ill. 634.

⁷ *Green v. Oakes*, 17 Ill. 249.

for a jury.¹ The public is an ever-existing grantee.² Dedication can be made only by the owner of the ground.³ Streets dedicated forever remain to the use of the public.⁴ Acceptance by the public authorities is essential to consummate the grant.⁵ The fee, when dedicated, is held by the corporation in whom it vests, in trust, and cannot be sold or aliened; nor can the land be used for any other purpose than that for which it has been dedicated.⁶ Streets and alleys, however, may be vacated and laid out, widened, re-located, etc. The general incorporation act, as well as the charters of cities, towns and villages, prescribe how this is to be done.

4. The right of eminent domain, a sovereign power, the power to take private property for public use, underlies all statutes and proceedings whereby private property is taken for public use.⁷ It can be exercised only by making to the owner just compensation,⁸ and is applicable only to the condemnation of property,⁹ and for public, not private, purposes. So that a cart-way or private road cannot be established over lands against the objections of owners,¹⁰ as prescribed by the statute; such statute is repugnant to the constitution.¹¹

¹ *Alvord v. Ashley*, 17 Ill. 369.

² *Warren v. The Town of Jacksonville*, 15 Ill. 236; *Alvord v. Ashley*, 17 Ill. 363.

³ *Gentlemen v. Soule*, 32 Ill. 271.

⁴ *Waugh v. Leech*, 28 Ill. 488.

⁵ *Rees v. Chicago*, 38 Ill. 322; *Daniels v. The People*, 21 Ill. 442; *Marcy v. Taylor*, 19 Ill. 634.

⁶ *City of Alton v. Illinois Trans. Co.*, 12 Ill. 38.

⁷ *Johnson v. Joliet, etc. R. R. Co.*, 23 Ill. 202; 6 How 529; 11 Pet. 420; 23 Pick. Mass. 361; 2 Kent's Com. 239 n.

⁸ *Chicago v. Larned*, 34 Ill. 203; *Chicago v. Laflin*, 49 Ill. 172; *The People v. Williams*, 51 Ill. 63.

⁹ *Harward v. St. Clair Drain Co.*, 51 Ill. 130; *Hessler v. Drainage Co.*, 53 Ill. 105.

¹⁰ *Nesbitt v. Trumbo*, 39 Ill. 110; *Crear v. Crossby*, 40 Ill. 175.

¹¹ *Id.*

SECTION V.

RIVERS AND FERRIES.

1. A river is a natural stream of water.
2. Rivers are either public or private, navigable or not navigable.
3. The bed or soil of rivers, by whom owned.
4. Rivers which are navigable highways.
5. Private rivers.
6. A ferry defined.
7. The franchise a grant.
8. Establishment of ferries.
9. A ferry franchise is an incorporeal hereditament; it descends to heirs, and is real estate.
10. The owners of ferries are common carriers; their rights and liabilities.
11. A bridge defined.
12. Bridges either public or private.
13. Toll bridges.
14. The expense of bridges, how assessed.
15. Dedication.
16. Repairs.
17. Highways; the law of the road applicable to them.
18. Private bridges.

1. A river is a natural stream of water flowing betwixt banks or walls in a bed of considerable depth and width, being so called whether its current sets always one way or flows and reflows with the tide.¹

2. Rivers are either public or private. Public rivers are divided into navigable and not navigable—the distinction being that the former flow and reflow with the tide, which the latter do not. Both are navigable in the popular sense of the term.²

3. At common law, the bed or soil of all rivers, subject to the ebb and flow of the tide to the extent of such ebb and flow, belongs to the crown; and the bed or soil of all rivers above the ebb and flow of the tide, or in which there is no tidal effect, belongs to the riparian proprietors, each owning to the centre or thread,—*ad filum aquæ*,—where the opposite banks belong to different persons. In this country the com-

¹ Woolrych, Wat. 40; 16 N. H. 467.

² Angell, Tide, Wat. 74, 75; 7 Pet. 324; 26 Wend. N. Y. 404; 5 Taunt. 705.

mon law has been recognized as the law of many of the states, the state succeeding to the right of the crown;¹ but in Pennsylvania, North Carolina, South Carolina, Iowa, Mississippi, and Alabama, it has been determined that the common law does not prevail, and that the ownership of the bed or soil of all rivers navigable for any useful purpose of trade or agriculture, whether tidal or fresh-water, is in the state.² At common law the ownership of the crown extends to high-water mark,³ and in several states of this country the common law has been followed;⁴ but in others it has been modified by extending the ownership of the riparian proprietor, subject to the servitudes of navigation and fishery, to low-water mark,⁵ unless these decisions may be explained as applying to fresh-water rivers.⁶ In England many rivers originally private have become public as regards the right of navigation, either by immemorial use or by acts of parliament.⁷

4. In this country all rivers, whether tidal or fresh-water, are, of common right, navigable highways, if naturally capable of use for the floating of vessels, boats, rafts, or even logs, or "whenever they are found of sufficient capacity to float the products of the mines, the forests, or the tillage of the country through which they flow, to market."⁸ The state has the right to improve all such rivers, and to regulate them by lawful enactments for the public good.⁹ Any obstruction of them without legislative authority is a nuisance, and

¹ 4 Pick. Mass. 268 ; 26 Wend. N. Y. 404 ; 1 Halst. N. J. 1 ; 4 Wis. 486.

² 2 Binn. Penn. 475 ; 3 Iowa, 1 ; 29 Miss. 21 ; 11 Ala. 436.

³ Angell, Tide, Wat. 69-71 ; 3 Barn. & Ald. 967 ; 5 *id.* 268.

⁴ 12 Barb. N. Y. 616 ; 7 Pet. 324 ; 3 How. 221 ; 25 Conn. 346.

⁵ 28 Penn. St. 206 ; 11 Ohio, 138.

⁶ 2 Smith, Lead. Cas. 224.

⁷ Woolrych, Wat. 40.

⁸ 8 Barb. N. Y. 239 ; 18 *id.* 277 ; 31 Me. 9 ; 42 *id.* 552 ; 20 Johns. N. Y. 90 ; 5 Ind. 8.

⁹ 31 Me. 361 ; 5 Ind. 13 ; 29 Miss. 21.

any person having occasion to use the river may abate the same, or, if injured thereby, may receive his damages from its author.¹ By the ordinance of 1787, art. 4, relating to the northwestern territory, it is provided that the navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways and forever free.²

5. Rivers, when naturally unfit for public use, as above described, are called private rivers. They are the private property of the riparian proprietors, and cannot be appropriated to public use as highways, by deepening or improving their channels, without compensation to their owners.³ A river, then, may be considered, as private in the case of shallow and obstructed streams; as private property, but subject to public use, when it can be navigated; and as public, both with regard to its use and property. Some rivers possess all these qualities. The Hudson is mentioned as an instance; in one part it is entirely private property, in another the public have the use of it; and it is public property from the mouth as high up as the tide flows.⁴

6. A ferry is a liberty to have a boat upon a river for the transportation of men, horses and carriages, with their contents, for a reasonable toll.⁵ The term is also used to designate the place where such liberty is exercised.⁶ In England, ferries are established by royal grant or by prescription, which is an implied grant; in the United States, by legislative authority, exercised either directly or by a delegation of powers to courts,

¹ Angell, Tide, Wat. 111-123; 28 Penn. St. 195; 4 Wis. 454; 6 Cow. N. Y. 518.

² 3 Story U. S. Laws, 2077; 29 Miss. 21; 2 Mich. 519.

³ 26 Wend. N. Y. 404; 6 Barb. N. Y. 265; 18 *id.* 277; 8 Penn. St. 379.

⁴ Angell, Wat. Course, 205, 206; 6 Barb. N. Y. 265.

⁵ 42 Me. 9; 3 Zab. N. J. 206; Woolrych, Ways, 217.

⁶ 4 Mart. La. N. S. 426.

commissioners or municipalities.¹ Without such authority no one, though he may be the owner of both banks of the river, has the right to keep a public ferry;² though after twenty years' uninterrupted use such authority will be presumed to have been granted.³

7. The franchise of a ferry will, in preference, be granted to the owner of the soil, but may be granted to another; and by virtue of the right of eminent domain the soil of another may be condemned to the use of the ferry, upon making just compensation.⁴ If the termini of the ferry be a highway, the owner of the fee will not be entitled to compensation;⁵ though in Pennsylvania a different doctrine prevails.⁶

8. One state has the right to establish ferries over a navigable river separating it from another state or from a foreign territory, though its jurisdiction may extend only to the centre of such river; and the exercise of this right does not conflict with the provision in the constitution of the United States conferring upon congress the power "to regulate commerce with foreign nations, and among the several states," nor with any law of congress upon that subject.⁷ A state may at its pleasure erect a new ferry so near an older ferry as to impair or destroy the value of the latter by drawing away its custom, unless the older franchise be protected by the terms of its grant.⁸ But if an individual, with-

¹ 7 Pick. Mass. 344; 11 Pet. 420; 20 Conn. 218; 18 Ark. 19.

² 3 Mo. 470; 13 Ill. 27; 11 Pet. 420; Willes, 508.

³ 2 Dev. N. C. 402; 3 Scam. 53; 7 Ga. 348.

⁴ But see *Mills v. County Commissioners*, 3 Scam. 53; *Trustees v. Tatman*, 13 Ill. 27; 6 Barnew. & C. 703; 5 Yerg. Tenn. 189; 9 Ga. 359; 8 Me. 365; 2 Cal. 262.

⁵ 3 Kent, Com. 421 n.; 4 Zab. N. J. 718; 7 Gratt. Va. 205.

⁶ 1 Yeates, Penn. 167; 9 Serg. & R. Penn. 31; 3 Watts. Penn. 219; see 1 Gross' Stat. 293, 297; *Betts v. Menard*, Breese, appendix 10.

⁷ 11 Wend. N. Y. 586; *Gear v. Bullerdiel*, 34 Ill. 75; 3 Yerg. Tenn. 387; 3 Zab. N. J. 206; 2 Gilmer, Va. 197; 16 B. Monr. Ky. 699; *Mills v. Brown*, 2 Scam. 549.

⁸ 15 Pick. Mass. 243; 2 Gilm. 197; *Mills v. County of St. Clair*, 2 Gilm. 197; *Gales v. Anderson*, 13 Ill. 413; 6 How. 507; 25 Wend. N. Y. 628.

out authority from the state, erect a new ferry so near an older ferry, lawfully established, as to draw away the custom of the latter, such individual will be liable to an action on the case for damages, or to a suit in equity, for an injunction in favor of the owner of the latter.¹

9. The franchise of a ferry is an incorporeal hereditament, and as such it descends to heirs, is subject to dower, may be leased, sold and assigned ;² but, nevertheless, being a franchise in which the public have rights and interests, it is subject to legislative regulation for the enforcement and protection of such rights and interests.³

10. The owners of ferries are common carriers, and liable as such for the carriage of the goods and persons which they receive upon their boats. They are bound to have their ferries furnished with suitable boats, and to be in readiness at all proper times to transport all who apply for a passage.⁴ They must have their flats so made and so guarded with railings that all drivers with horses and carriages may safely enter thereon ; and as soon as the carriage and horses are fairly on the drops or slips of the flat, and during their transportation, although driven by the owner or his servant, they are in the possession of the ferryman, and the owners of the ferry are answerable for the loss or injury of the same, unless occasioned by the fault of the driver.⁵ If, however, the ferry be rented, the tenant, and not the

¹ 3 Bl. Com. 219; 3 Wend. N. Y. 618; 3 Ala. 211; 16 B. Monr. Ky. 699.

² 5 Dundy v. Chambers, 23 Ill. 369; 5 Com. Dig. 291; 12 East, 334; 3 Mo. 470; 7 Ala. N. S. 55.

³ 10 Barb. N. Y. 223; 4 Zab. N. J. 718; 11 B. Monr. Ky. 361.

⁴ 3 Mod. 289; 3 Penn. St. 342; 5 Mo. 36; 12 Ill. 344; 5 Cal. 360; Claypole v. McAllister, 20 Ill. 504; Fisher v. Clisbee, 12 Ill. 344.

⁵ 1 McCord S. C. 439; 14 Tex. 290; 28 Miss. 792; 4 Ohio St. 722; 7 Cush. Mass. 154.

owner, is subject to these liabilities, because such tenant is *pro hac vice* the owner.¹

11. A bridge is a structure erected over a river, creek, stream, ditch, ravine, or other place, to facilitate the passage thereof, including by the term both arches and abutments.²

12. Bridges are either public or private. Public bridges are such as form a part of the highway, common, according to their character as foot, horse or carriage bridges, to the public generally, with or without toll,³ though their use may be limited to particular occasions, as to seasons of flood or frost.⁴ They are established either by legislative authority or by dedication. *By legislative authority:* By the Great Charter⁵ in England, no town or freeman can be compelled to make new bridges where never any were before but by act of parliament; under such act they may be erected and maintained by corporations chartered for the purpose, or by counties, or in whatever other mode may be prescribed.⁶ In this country it is the practice to charter companies for the same purpose, with the right to take tolls for their reimbursement,⁷ or to erect bridges at the state's expense; or by general statutes to impose the duty of erection and maintenance upon towns, counties, or districts.⁸ For their erection the state may take private property, upon making compensation, as in case of other highways;⁹ the rule of damages for land so taken being not its mere value for agricultural purposes, but

¹ 1 Ala. 366; 3 *id.* 160; 12 Ired. N. C. 1; 26 Barb. N. Y. 618; 22 Vt. 170; *Claypole v. McAllister*, 20 Ill. 514. See Washburn, Easements.

² 3 Harr. N. J. 108; 15 Vt. 438; *City of Chicago v. McGinn*, 51 Ill. 266.

³ 2 East, 342.

⁴ 2 Maule & S. 262; 4 Campb. 189.

⁵ 9 Hen. III, c. 15.

⁶ Woolrych, Ways, 196.

⁷ 4 Pick. Mass. 34.

⁸ 12 N. Y. 52; 2 N. H. 513.

⁹ Angell, Highways, § 81, *et seq.*

its value for a bridge site, minus the benefits derived to the owner from the erection.¹ The right to erect a bridge upon the land of another may also be acquired by mere parol license, which, when acted upon, becomes irrevocable.²

13. The franchise of a toll-bridge or ferry may be taken, like other property, for a free bridge;³ and when vested in a town or other public corporation, may be so taken without compensation.⁴ A new bridge may be erected, under legislative authority, so near an older bridge or ferry as to impair or destroy its value, without compensation, unless the older franchise be protected by the terms of its grant;⁵ but, unless authorized by statute, a new bridge so erected is unlawful, and may be enjoined as a nuisance.⁶ And if the older franchise, vested in an individual or private corporation, be protected, or be exclusive within given limits, by the terms of its grant, the erection of a new bridge or ferry, even under legislative authority, is unconstitutional, as an act impairing the obligations of contract.⁷

14. The entire expense of a bridge erected within a particular town or district may be assessed upon the inhabitants of such town or district.⁸ A state has the right to erect a bridge over a navigable river within its own limits;⁹ but, in exercising this right, care must be taken to interrupt navigation as little as possible,¹⁰ since for any unnecessary interruption the proprietors

¹ 17 Ga. 30.

² 11 N. H. 102; 14 Ga. 1; see also 4 R. I. 47.

³ 6 How. 507; 23 Pick. Mass. 360.

⁴ 10 How. 511.

⁵ 11 Pet. 420; 7 Pick. Mass. 344; 6 Paige, Ch. N. Y. 554; 1 Bard. Ch. N. Y. 547; 3 Sandf. Ch. N. Y. 625.

⁶ 3 Wend. N. Y. 610; 3 Bl. Com. 218, 219; 11 Pet. 261.

⁷ 7 N. H. 35; 17 Conn. 40.

⁸ 23 Conn. 416.

⁹ 4 Pick. Mass. 460; 27 Penn. St. 303; 15 Wend. N. Y. 113.

¹⁰ 43 Me. 193; 3 Hill, N. Y. 621; 4 Ind. 36.

of the bridge will be liable in damages to the persons specially injured thereby, or to have the bridge abated as a nuisance, by injunction, though not by indictment, such bridge, although authorized by state laws, being in contravention of rights secured by acts of congress regulating commerce.¹

15. The dedication of bridges depends upon the same principles as the dedication of highways, except that their acceptance will not be presumed from mere use, until they are proved to be of public utility.²

16. At common law, all public bridges are *prima facie* repairable by the inhabitants of the county, without distinction of foot, horse or carriage bridges, unless they can show that others are bound to repair particular bridges.³ In this country, the common law not prevailing, the duty of repair is imposed by statute, generally, upon towns or counties;⁴ except that bridges owned by corporations or individuals are repairable by their proprietors,⁵ and that where the necessity for a bridge is created by the act of an individual or corporation in cutting a canal, ditch or railway through a highway, it is the duty of the author of such necessity to make and repair the bridge.⁶ The parties chargeable must constantly keep the bridge in such repair as will make it safe and convenient for the service for which it is required.⁷ If the parties chargeable with the duty of repairing neglect so to do, they are liable

¹ 13 How. 518; 5 McLean C. C. 425.

² Angell, High. 111; 18 Pick. Mass. 312; 23 Wend. N. Y. 466; 6 Mass. 458; 13 East, 220.

³ 5 Burr. 2594; Bacon, Abr., Bridges; see Act March 22, 1872; 1 Gross 767, §§ 19, 20.

⁴ 9 Conn. 32; 12 N. Y. 52; 2 Ind. 147; 13 Pick. Mass. 60.

⁵ 4 Pick. Mass. 341; 6 Johns. N. Y. 90; 24 Conn. 491.

⁶ 6 Mass. 458; 23 Wend. N. Y. 466; 6 Hill, N. Y. 516.

⁷ 6 Johns. N. Y. 189; 8 Vt. 189; 23 Wend. N. Y. 254.

to indictment.¹ It has also been held that they may be compelled to repair by mandamus.² If a corporation be charged with the duty by charter, they may be proceeded against by *quo warranto* for the forfeiture of their franchise,³ or by action on the case for damages in favor of any person specially injured by reason of their neglect.⁴ And in this country a similar action is given by statute, in many states, against public bodies chargeable with repair.⁵

17. The law of travel upon bridges is the same as upon highways, except when burdened by tolls. The payment of tolls can be lawfully enforced only at the gate or toll-house.⁶ Where, by the charter of a bridge company, certain persons are exempted from payment, such exemption is to be liberally construed.⁷ Bridges, when owned by individuals, are real estate, and also when owned by the public.⁸ The materials of which they are formed belong to the parties who furnished them, subject to the public right of passage.⁹

18. A private bridge is one erected for the use of one or more private persons. Such a bridge will not be considered a public bridge although it may be occasionally used by the public.¹⁰ The builder of a private bridge over a private way is not indictable for neglect to repair, though it be generally used by the public.¹¹

¹ Angell, Highw. § 275; 1 Hill, N. Y. 50; 28 N. H. 195; 6 Hill, N. Y. 516.

² 1 Hill, N. Y. 50; 14 B. Monr. Ky. 92; 3 Zab. N. J. 214. But see 12 Ad. & E. 427; 3 Campb. 222.

³ 23 Wend. N. Y. 254.

⁴ 1 Spenc. N. J. 323; 6 Johns. N. Y. 90; 6 Vt. 496.

⁵ 14 Conn. 475; 10 N. H. 173; Angell, Highw. § 286 *et seq.*

⁶ 15 Me. 402.

⁷ 10 Johns. N. Y. 467; 7 Cow. N. Y. 33; 2 Cow. N. Y. 419.

⁸ Coke, 2d Inst. 705.

⁹ 6 East, 154; 6 Serg. & R. Penn. 229.

¹⁰ 12 East, 203-4; 3 Sandf. Ch. N. Y. 625.

¹¹ 7 Pick. Mass. 344; 11 Pet. 539; 6 Hill, N. Y. 516; 23 Wend. N. Y. 466; 4 Johns. Ch. N. Y. 150.

SECTION VI.

RAILWAYS AND CANALS.

1. A railway is a road graded, having rails of iron or other material.
2. The right of way.
3. The construction of the road; crossings at highways.
4. Liabilities — injuries to stock, for the acts of agents, signals, management of trains.
5. Railway stock, shares, preferred stock, bonds, etc.
6. The charter a grant, inviolable.
7. A canal defined.
8. How constructed.
9. Navigation of
10. Tolls.

1. A RAILWAY is a road graded and having rails of iron or other material for the wheels of carriages to run upon. Railways in their present form first began to be extensively constructed after the successful experiments in the use of locomotives in 1829. They had been in use in a rude form as early as 1676. These earlier railways were of limited extent, built by private persons on their own land, or upon the land of others, by special license, called way-leave. In their modern form, railways are usually (though not necessarily) owned by a corporation, which is authorized to exercise some important privileges, such as a right of eminent domain, etc. Within a few years another class of railways, namely, those laid in the streets of towns and cities, have become very numerous, and many very interesting questions have arisen and are still arising in regard to them, most of which remain as yet unsettled.¹ Most of the authorities in the books² are cases of steam railroads between which and the common street railroads important differences exist. The *charter* of a public railway requires the grant of the supreme

¹ See 14 Gray, Mass. 69; 4 Cush. Mass. 63; 18 Penn. St. 187; 2 Stockt. Ch. N. J. 352.

² See Illinois Dig. 844-856.

legislative authority of the state.¹ It is usually conferred upon a private corporation, but sometimes upon a public one, where the stock is owned and the company controlled by the state.² Such charter, when conferred upon a private company or a natural person, as it may be, is irrevocable, and only subject to general legislative control, the same as other persons natural or artificial.³

2. THE RIGHT OF WAY is generally obtained by the exercise of the right of eminent domain. This can only be done in strict conformity to the charter or grant. The company may enter upon lands for the purpose of making preliminary surveys, by legislative permission, without becoming trespassers, and without compensation.⁴ The company acquire only a right of way, the fee remaining in the former owner. The company can take nothing from the soil, except for the purpose of construction.⁵ The mode of estimating compensation to the land owners varies in different states. The more general mode is to award such a sum as will fairly compensate the actual loss, *i. e.*, to give a sum of money which being added to the land remaining will make it as valuable as the whole would have been if none of it had been taken.⁶ The company may lay their road across a highway, but not without making compensation to the owner of the fee for the additional servitude thus imposed upon the land.⁷

3. THE CONSTRUCTION OF THE ROAD must be within

¹ 3 Engl. Railw. Cas. 65; 3 N. Y. 430.

² Redfield, Railw. § 17; 1 Ohio St. 657; 4 Wheat. 668; 8 Watts, Penn. 316.

³ 4 Wheat. 668; 2 Kent, Com. 275 and notes; 11 La. Ann. 253; 2 Gray, Mass. 1; 26 Penn. St. 287.

⁴ 9 Barb. N. Y. 449; Wright, Ohio, 132 and cases cited.

⁵ 2 Hill, N. Y. 342; 6 Mass. 90; 20 Barb. N. Y. 644; 16 Ill. 198; 11 N. Y. 308.

⁶ 13 Barb. N. Y. 171; Redfield, Railw. § 71, and cases cited.

⁷ 3 Hill, N. Y. 567; 25 Wend. N. Y. 462; 1 Exch. 723; 16 N. Y. 97; 9 Cush. Mass. 1.

the prescribed limits of the charter. The right of deviation secured by the charter or general laws is lost when the road is once located.¹ Distance, having reference either to the length of the line or to deviation, is to be measured in a straight line through a horizontal plane.² In crossing highways, public safety undoubtedly requires that it should not be at grade, or, if so, that the crossing should be protected by gates.³

4. The company are not liable for any injury to domestic animals straying upon their track, or while crossing it, in the highway, unless they have been guilty of some neglect in building fences or in the management of their trains.⁴ The company are not liable for the act of the contractor or sub-contractor, or their agents, except in doing precisely what is contemplated in the contract.⁵ Railway companies are liable for the acts of their agents and sub-agents within the range of their employment; and it has been the purpose of the courts to give such agents a large discretion, and hold the companies liable for all acts of their agents within the most extensive range of their charter powers.⁶ But the company are not liable for the willful acts of their agents, out of the range of their employment, unless directed by the company or subsequently adopted by them.⁷ The company are not liable for injuries to servants through the neglect of their fellow-servants or defects in machinery, unless they were themselves in fault in employing incompetent servants or purchasing imperfect machinery for the road.⁸ Rail-

¹ 2 Ohio St. 235; Redfield, Railw. § 105; 2 Swan, Tenn. 282.

² 27 Vt. 766; 36 Eng. L. & Eq. 114.

³ 20 Law Jour. 428.

⁴ 29 Me. 307; 6 Penn. St. 472; 4 Exch. 580.

⁵ 24 Barb. N. Y. 355; 4 Den. N. Y. 311; Redfield, Railw. § 168.

⁶ 14 How. 483; 27 Vt. 110; 7 Cush. Mass. 385.

⁷ 2 Harr. N. J. 514; Redfield, Railw. § 169 and notes.

⁸ 3 Mees. & W. Exch. 1; 4 Metc. Mass. 49; 6 Hill, N. Y. 592; 9 N. Y. 175.

way companies are liable for any injury accruing to the person or property of another through any want of reasonable care and prudence on the part of their agents or employes. This occurs from the omission of the requisite signals at road-crossings, and from want of care in other respects in crossing highways.¹ The conduct of railway trains is so far matter of science and skill that it is proper to receive the testimony of experts in regard to it.² Railway companies, like other corporations, cannot be bound by any contract of their agents beyond their charter power, or, as it is called, *ultra vires*, although assumed by their express direction or consent.³

5. The large amount of capital invested in railway stock and bonds, or notes and mortgages, in this country, renders this subject one of very considerable importance. The forms of such investments are stock, preferred stock, and notes with coupons attached for the payment of the interest at stated times (generally once in six months), these being secured by mortgage of the road and all its appurtenances. The practice adopted by some of the railways in this country, of issuing preferred stock, or preference stock, as it is called in England, and of issuing stock at reduced prices after all has been sold at par which can be disposed of in the market, or of mortgaging the entire road two or three times over, giving successive priorities, has generally been regarded as impolitic, if not positively fraudulent.⁴

The rights and remedies of bond holders and mortgagees, as well as the holders of preferred stock, depend

¹ 2 Cush. Mass. 539; 10 *id.* 562; see also 28 Vt. 185; 18 Ga. 679; 8 Gray, Mass.

² 23 Vt. 394, 395; 17 Ill. 509, 580.

³ 7 Eng. L. & Eq. 505; 16 *id.* 180.

⁴ 27 Vt. 673, 692; Redfield, Railw. 563, § 234, and cases cited in notes.

very much upon the forms of the contracts and the powers granted by the legislature to the company. The holders of preferred stock may, in a court of equity, compel the company to apply all their net earnings first to the payment of the stipulated dividend upon such stock,¹ and it is the familiar practice of the courts of equity in this country to allow the successive mortgagees foreclosures upon all rights posterior to their own. How the property is to be controlled and managed thereafter is not yet well defined. The subject was a good deal discussed in an important case determined by the supreme court of Vermont.²

It has been held that a trustee of money is not justified in investing the same in railway securities, it being of too precarious a character.³ In *Ellis v. Eden*⁴ it was held that "stock in the foreign funds" included the American state stocks of Virginia, Massachusetts, etc., but not Boston water scrip or bonds of the Pennsylvania railway. Railway bonds, with coupons attached made payable to bearer, pass by delivery, the same as bills of exchange or bank bills, and have thus become a quasi currency.⁵ Constitutional questions have reference chiefly to the inviolability of charter rights under the United States constitution, and rest mainly upon the doctrines and principles of the leading case of *Dartmouth College v. Woodward*.⁶ The provision in the United States constitution referred to is that prohibiting the several states from passing "any law impairing the obligation of contracts."

¹ 30 Lond. Law Times, 141. See also 2 Stockt. Ch. N. J. 171.

² 31 Vt.

³ 10 Eng. L. & Eq. 123; 21 N. H. 352.

⁴ 30 Lond. Law Times, 601.

⁵ 1 Stockt. Ch. N. J. 667; 13 N. Y. 599. See also 11 Paige, Ch. N. Y. 634; 3 Hill, N. Y. 159; Redfield, Railw. § 239.

⁶ 4 Wheat. 518.

RAILROADS IN ILLINOIS.—Every railroad corporation organized or doing business in this state, under the laws or authority thereof, shall have and maintain a public office or place in this state for the transaction of its business, where transfers of stock shall be made, and in which shall be kept, for public inspection, books, in which shall be recorded the amount of capital stock subscribed, and by whom; the names of the owners of its stock, and the amounts owned by them respectively; the amount of stock paid in and by whom; the transfers of said stock; the amount of its assets and liabilities, and the names and places of residence of its officers. The directors of every railroad corporation shall, annually, make a report, under oath, to the auditor of public accounts, or some officer to be designated by law, of all their acts and doings, which report shall include such matters relating to railroads as may be prescribed by law. And the general assembly shall pass laws enforcing by suitable penalties the provisions of this section. § 9, Art. XI, Const. Ill. 1870.

The rolling stock and all other movable property belonging to any railroad company or corporation in this state, shall be considered personal property, and shall be liable to execution and sale in the same manner as the personal property of individuals, and the general assembly shall pass no law exempting any such property from execution and sale. § 10, *id.*

No railroad corporation shall consolidate its stock, property or franchises with any other railroad corporation owning a parallel or competing line; and in no case shall any consolidation take place except upon public notice given, of at least sixty days, to all stockholders, in such manner as may be provided by law. A majority of the directors of any railroad corporation now incorporated or hereafter to be incorporated by the laws of this state shall be citizens and residents of this state. § 10, *id.*

Railways heretofore constructed, or that may hereafter be constructed in this state, are hereby declared public highways, and shall be free to all persons for the transportation of their persons and property thereon, under such regulations as may be prescribed by law. And the general assembly shall, from time to time, pass laws establishing reasonable maximum rates of charges for the transportation of passengers and freight on the different railroads in this state. § 12, *id.*

No railroad corporation shall issue any stock or bonds, except for money, labor or property, actually received, and applied to the purposes for which such corporation was created; and all stock dividends and other fictitious increase of the capital stock or

indebtedness of any such corporation shall be void. The capital stock of no railroad corporation shall be increased for any purpose, except upon giving sixty days' public notice, in such manner as may be provided by law. § 13, *id.*

The exercise of the power and the right of eminent domain shall never be so construed or abridged as to prevent the taking, by the general assembly, of the property and franchises of incorporated companies already organized, and subjecting them to the public necessity the same as of individuals. The right of trial by jury shall be held inviolate in all trials of claims for compensation, when, in the exercise of the said right of eminent domain, any incorporated company shall be interested either for or against the exercise of said right. § 14, *id.*; *R. R. Co. v. Black*, 58 Ill. 33.

The general assembly shall pass laws to correct abuses and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this state, and enforce such laws by adequate penalties, to the extent, if necessary for that purpose, of forfeiture of their property and franchises. § 15, *id.*

ILLINOIS CENTRAL RAILROAD.—No contract, obligation or liability whatever, of the Illinois Central Railroad Company, to pay any money into the state treasury, nor any lien of the state upon or right to tax property of said company, in accordance with the provisions of the charter of said company, approved February 10, in the year of our Lord 1851, shall ever be released, suspended, modified, altered, remitted, or in any manner diminished or impaired by legislative or other authority; and all moneys derived from said company, after the payment of the state debt, shall be appropriated and set apart for the payment of the ordinary expenses of the state government, and for no other purposes whatever.

No county, city, town, township, or other municipality, shall ever become subscriber to the capital stock of any railroad or private corporation, or make donation to or loan its credit in aid of such corporation: *Provided, however*, that the adoption of this article shall not be construed as affecting the right of any municipality to make such subscriptions where the same have been authorized, under existing laws, by a vote of the people of such municipalities prior to such adoption.

The Illinois and Michigan Canal shall never be sold or leased until the specific proposition for the sale or lease thereof shall first have been submitted to a vote of the people of the state, at a general election, and have been approved by a majority of all the votes polled at such election. The general assembly shall

never loan the credit of the state, or make appropriations from the treasury thereof, in aid of railroads or canals: *Provided*, that any surplus earnings of any canal may be appropriated for its enlargement or extension.

6. A corporate charter is regarded as a legislative grant of certain franchises and immunities involving pecuniary value, and, consequently, not revocable, or subject to legislative control in any other sense than as all rights of property are liable to be affected by general legislation.¹ The essential franchise of a private corporation, being private property, cannot be taken for public use without adequate compensation.² But to be thus inviolable it is essential that the franchises in question shall be such as are indispensable to the existence and just operation of the corporation, or else that they be expressly secured to the corporation in its charter.³ These exclusive grants are to be strictly construed in favor of the corporation, and liberally expounded in favor of public rights and interests.⁴ It makes no difference in regard to the rights of the corporation that it may have received large grants of land or other property from the state or sovereignty conferring the charter. Unless the stock is owned by the state, or the appointment and control of the principal officers are retained by the

¹ 4 Wheat. 518; 27 Vt. 140; Redfield, Railw. § 231.

Grave questions arise out of the assertion of the right by the state to regulate fares or tolls on railways; the railway companies insisting that such a regulation is in violation of their vested rights, and directly impairing the obligation of the contract involved in their charters. In this, we apprehend, they are mistaken. The regulation of the rights and privileges granted is one thing, their alteration or the impairing the obligation of a contract quite another. A railway company is, like a natural person, amenable to the laws. Police regulations in all our cities are but assertions of the sovereign power of the state in the same direction. No one doubts the power or validity of ordinances regulating the running of hackney coaches. The public good requires it. The regulations of tolls on turnpike roads and toll-bridges are forcible illustrations of the exercise of the regulating or police powers of the state.

² 15 Vt. 745; 6 How. 507.

³ 11 Pet. 420.

⁴ 13 How. 71; 1 La. Ann. 253.

state, so as to create it a public corporation, its essential franchises are inviolable to the same extent as other private rights of a pecuniary character, and its functions are equally independent of legislative control as are those of any natural person.¹ See, also, cases in the United States supreme court, maintaining the same principle.²

7. A canal is an artificial cut or trench in the earth, for conducting and confining water to be used for transportation.

8. Public canals originate under statutes and charters enacted to authorize their construction and to protect and regulate their use. They are in this country constructed and managed either by the state itself, acting through the agency of commissioners, or by companies incorporated for the purpose.³ These commissioners and companies are armed with authority to appropriate private property for the construction of their canals, in exercising which they are bound to a strict compliance with the statutes by which it is conferred. Where private property is thus taken, it must be paid for in gold and silver, *i. e.* legal tender.⁴ Such payment need not precede or be contemporaneous with the taking;⁵ though, if postponed, the proprietor of the land taken is entitled to interest.⁶ After the appropriation of land for a canal, duly made under statute authority, though the title remains in the original owner until he is paid therefor, he cannot sustain an action against the party taking the same for an injury thereto.⁷ But if there be a deviation from the statute

¹ 14 Miss. 599; 6 Penn. St. 86; 9 Wend. N. Y. 351; 4 Barb. N. Y. 64.

² 18 How. 331, 380, 384; Redfield, Railw. § 232.

³ See Illinois Dig., Canal Lands and Canal Laws.

⁴ 8 Blackf. Ind. 246.

⁵ 20 Johns. N. Y. 735; 4 Zab. N. J. 587.

⁶ 5 Den. N. Y. 401; 1 Md. Ch. Dec. 248.

⁷ 19 Barb. N. Y. 263, 370; 4 Wend. N. Y. 647; 20 Johns. N. Y. 735; 7 Johns. Ch. N. Y. 314; 19 Penn. St. 456.

authority, the statute is no protection against suits by persons injured by such deviation.¹ Appraisers appointed to assess damages for land taken have no authority to entertain claims not presented in the mode and within the time prescribed by statute.² But though a special remedy for damages be given by a statute authorizing the construction of a canal, the party injured thereby is not barred of his common-law action.³ The legislature have the exclusive power to determine when land may be taken for a canal or other public use, and the courts cannot review their determination in that respect.⁴

9. In navigating canals, it is the duty of the canal-boats to exercise due care in avoiding collisions, and in affording each other mutual accommodation; and for any injury resulting from the neglect of such care the proprietors of the boats are liable in damages.⁵ The proprietors of the canal will be liable for any injury to canal-boats occasioned by a neglect on their part to keep the canal in proper repair and free from obstructions.⁶

10. In regard to the right of the proprietors of canals to tolls, the rule is that they are only entitled to take them as authorized by statute, and that any ambiguity in the terms of the statute must operate in favor of the public.⁷ For other cases relating to various points arising under statutes in regard to canals see the reports.⁸

¹ 4 Den. N. Y. 356; 26 Wend. N. Y. 485; Coop. Ch. 77.

² 9 Barb. N. Y. 496; 11 N. Y. 314.

³ 24 Barb. N. Y. 159; 5 Cow. N. Y. 163; 16 Conn. 98. See to the contrary, 12 Mass. 466; 1 N. H. 339.

⁴ 9 Barb. N. Y. 350; 8 Blackf. Ind. 266.

⁵ 19 Wend. N. Y. 399; 1 Penn. St. 44.

⁶ 7 Mass. 189; 7 Ind. 462; 20 Barb. N. Y. 620; 4 Kill. N. Y. 630.

⁷ 2 Barnew. & Ad. 792; 2 *id.* 58; 9 How. 172; 6 Cow. N. Y. 567; 21 Penn. St. 131.

⁸ 8 Blackf. Ind. 352; 12 Mass. 403; 11 Penn. 202; 1 Gill, Md. 222; 17 Barb. N. Y. 193; 19 *id.* 657; 25 Wend. N. Y. 692.

SECTION VII.

TURNPIKES, TOLL BRIDGES AND PLANK ROADS.

1. A turnpike is a gate, but generally a highway over which the public have the right to travel upon payment of toll.

2. The law of the road.

3. Toll bridges.

4. Plank roads.

1. A turnpike is a gate set across a road, to stop travelers and carriages until toll is paid for passage thereon. In the United States, turnpike roads are often called turnpikes. A turnpike road is a road or highway over which the public have the right to travel upon payment of toll, and on which the parties entitled to such toll have the right to erect gates and bars to insure its payment.¹ Turnpike roads are usually made by corporations under legislative authority; and, the roads being deemed a public use, such corporations are usually armed with the power to take private property for their construction, upon making just compensation. In the execution of this power they are bound to a strict compliance with the terms upon which it is given, and are subject to the rules which govern the exercise of the right of eminent domain under the constitutions of the several states.² In estimating the damages to be awarded for lands taken for a turnpike road, the rule is to allow the value of the land and its improvements, deducting therefrom the benefits from the road and the additional value given by it to the remaining property.³ The legislature may authorize the conversion of an existing highway into a turnpike road,⁴ without any pecuniary equivalent to the owner of the fee, such road still remaining a public highway.⁵ Under the power

¹ 6 Mees. & W. Exch. 428; 16 Pick. Mass. 175.

² 1 Dan. Ky. 81; 6 Ohio, 15; 10 *id.* 396; 25 Penn. St. 229.

³ 20 Penn. St. 91, 95, 97.

⁴ 11 Vt. 198; 18 Conn. 32; 3 Barb. N. Y. 459; 4 Humphr. Tenn. 467.

⁵ 2 Ohio St. 419.

to take land for this purpose, the corporation may take land for a toll-house and a cellar under it and a well for the use of the family of the toll-keeper.¹ A turnpike road being a highway, any obstruction placed thereon renders the author of it liable as for a public nuisance.²

2. Turnpike companies, so long as they continue to take toll, are bound to use ordinary care in keeping their roads in suitable repair, and for any neglect of this duty are liable to an action on the case for the damages to any person specially injured thereby,³ and to an indictment on the part of the public.⁴ The law of travel upon turnpike roads is the same as upon ordinary roads, except as regards the payment of tolls. If there be any ambiguity in the authority granted to a turnpike company to take toll, it will be construed rather in favor of the public than of the grantee.⁵ Travelers are liable for toll though they avoid the gates;⁶ but not for the travel between the gates without passing the same.⁷ Exemptions from toll are construed most liberally in favor of the community.⁸ A road or turnpike laid out by an individual or by the select men of the town to facilitate the evasion of toll by travelers upon a turnpike road will entitle the turnpike company to an action on the case for damages, or to an injunction ordering the same to be closed.⁹ And such company is entitled to compensa-

¹ 9 Pick. Mass. 109.

² 16 Pick. Mass. 175; 8 Wend. N. Y. 555.

³ 6 Johns. N. Y. 90; 7 Conn. 86; 11 Wend. N. Y. 597; 6 N. H. 147; 10 Pick. Mass. 35; 5 Ind. 286; 11 Vt. 531.

⁴ 11 Wend. N. Y. 597; 1 Harr. N. J. 222; 9 Barb. N. Y. 161; 2 Gray, Mass. 58.

⁵ 2 Barnew. & Ad. 792; 2 Mann. & G. 134.

⁶ 2 Root, Conn. 524; 10 Vt. 197.

⁷ 2 B. Monr. Ky. 30; 10 Ired. N. C. 30; 11 Vt. 381.

⁸ Angell, Highw. § 359.

⁹ 10 N. H. 133; 13 *id.* 28; 18 Conn. 451; 1 Johns. Ch. N. Y. 315; 12 Barb. N. Y. 553; and see 4 Johns. Ch. N. Y. 150; 5 *id.* 101.

tion for the injury to their franchise by a highway which intersects their road at two distinct points, and thereby enables travelers to evade the payment of tolls, though such highway be regularly established by the proper authorities to meet the necessities of public travel.¹ If a turnpike company abuses its powers, or fails to comply with the terms of its charter, it is liable to be proceeded against by *quo warranto* for the forfeiture of its franchise.²

3. Toll bridges are frequently constructed by private corporations, and the tolls collected and enforced furnish the means of their support and maintenance.³

4. Plank roads are private corporations, and the law of highways pertaining to them and toll bridges is quite the same as in the case of turnpike roads.⁴

SECTION VIII.

PRIVATE WAYS.

1. A way is a passage, street or road.
2. A right of way, by prescription, by necessity, by reservation, by custom, in gross or appendant.
3. Twenty years' occupation adverse, a bar to the right.
4. The statute purporting to authorize the laying out of private ways against the objections of owners, unconstitutional.

1. A way is a passage, street or road. A right of way is the privilege which an individual, or a particular description of individuals, as, the inhabitants of a village or the owners or occupiers of certain farms, have of going over another's ground. It is an incorporeal hereditament of a real nature, entirely different from a common highway.⁵

¹ 1 Barb. N. Y. 286; but see 2 N. H. 199; 10 *id.* 133; 12 La. Ann. 649.

² 23 Wend. N. Y. 193, 223, 254; 1 Zab. N. J. 9; 2 Swann, Tenn. 282.

³ See Bridges, Ferries, *supra*; 1 Gross, 293-298.

⁴ See 1 Gross, 495-507.

⁵ Cruise, Dig. tit. xxiv, s. 1.

2. A right of way may arise *by prescription* and immemorial usage, or by an uninterrupted enjoyment for twenty years under a claim of right.¹ By grant, as where the owner grants to another the liberty of passing over his land.² If the grant be of a freehold right, it must be by deed.³ *By necessity*, as where a man purchases land accessible only over land of the vendor, or sells reserving land accessible only over land of the vendee, he shall have a way of necessity over the land which gives access to his purchase or reservation.⁴ The necessity must be absolute, not a mere convenience,⁵ and when it ceases the way ceases with it.⁶ *By reservation*, expressly made in the grant of the land over which it is claimed.⁷ *By custom*, as where navigators have a right of this nature to tow along the banks of navigable rivers with horses.⁸ *By acts of legislature*; though a private way cannot be so laid out without the consent of the owner of the land over which it is to pass.⁹ A right of way may be either a right in gross, which is a purely personal right incommunicable to another, or a right appendant or annexed to an estate, and which may pass by assignment with the estate to which it is appurtenant.¹⁰ A right of way appurtenant to all and every part of the land, and if such land be divided and conveyed in separate parcels, a right of way thereby passes to each of the grantees.¹¹

3. Twenty years' occupation of land, adverse to a

¹ 4 Barb. N. Y. 60; Coke, Litt. 113; 8 Pick. Mass. 504.

² 1 Ld. Raym. 75; 19 Pick. Mass. 250; Crabb. Real Prop. § 366.

³ 5 Barnew. & C. 221; 4 R. I. 47.

⁴ 22 Penn. St. 333; 19 Wend. N. Y. 507; 15 Conn. 39.

⁵ 2 McCord, S. C. 445; 24 Pick. Mass. 102.

⁶ 1 Barb. Ch. N. Y. 353.

⁷ 10 Mass. 183.

⁸ 3 Term. 253.

⁹ 4 Hill, N. Y. 47, 140; 15 Conn. 39, 83.

¹⁰ 3 Kent, Com. 420; 1 Watts, Penn. 35; 19 Pick. Mass. 250.

¹¹ 1 Cush. Mass. 285; 1 Serg. & R. Penn. 229.

right of way and inconsistent therewith, bars the right.¹ Lord Coke, adopting the civil law, says there are three kinds of ways: a footway called *iter*; a footway and horseway called *actus*; a cartway which contains the other two, called *via*.² To which may be added a *driftway*, a road over which cattle are driven.³ Where a party purchased a right of way, and received a written instrument to evidence the fact, and both sides of the way were fenced, and it was in constant use by him, for the purposes of a way, although the writing was not recorded, these facts constitute such notice to a subsequent purchaser as to prevent him from holding the right of way;⁴ and in such case equity has jurisdiction, as the injured party has no adequate remedy at law, and will perpetually enjoin such purchaser from obstructing the right of way.

4. The statute which in terms authorizes the establishment of private roads by assessing damages is unconstitutional.⁵

¹ 16 Barb. N. Y. 184.

² Coke, Litt. 56 *a*.

³ 1 Taunt. 279; Dig. 8, 3; 1 Brown, Civ. Law, 177.

⁴ McCann *v.* Day, 57 Ill. 101.

⁵ Nesbitt *v.* Trumbo, 39 Ill. 110; Crear *v.* Crosby, 40 Ill. 175.

I N D E X .

The figures at the right indicate the page, at the left the paragraph.

ABANDONMENT OF HIGHWAY	13, 14, 148
on, soil reverts to owner	4
ABATEMENT OF NUISANCE	5
obstructions, (P. O.)*	46
obstructions, (T. O.)* (<i>See Fence</i>)	97
ACCEPTANCE OF DAMAGES	
by owner, a waiver of all further question	34, 116, 117
ACCEPTANCE OF HIGHWAY	
by the public, user the proper proof of	3
ACCEPTANCE OF OFFICE (P. O.)	
by supervisor, return of, by sheriff	44
ACCIDENTS	6
ACCOMMODATION	
by travelers of each to the other	6, 8, 61, 62
ACCOUNTS	
of highway officers (<i>see Supervisor</i>)	54, 55
overseers, under township organization	92-95
commissioners	72, 73
ACQUIESCENCE	
of owner in public use of his property	2
ACQUISITION OF HIGHWAY,	
the modes of, pointed out	15, 61, 102, 103
ACTION	
for fines etc. (<i>see Suits : Fines and Penalties</i>)	52, 86-88
ACT OF APRIL 10, 1872, (<i>Roads and Bridges</i>)	
repealed	60, 150
tax collected under, how to be expended	60, 150
ACT OF APRIL 18, 1873	7-60
primary organization roads and bridges under	7-60
emergent	60
ACT OF APRIL 11, 1873	7
roads and bridges under township organization	61-151
emergent	151

* The abbreviations P. O. and T. O. denote counties not under township organization and counties under township organization respectively.

AFFAIRS, COUNTY, (P. O.)	
jurisdiction of the county court over	41
Cook county, see §§ 67, art. 10, Const. 1870.	
AFFIDAVIT (P. O.)	
of posting notice of application for a road	18
of service and posting notice for a cartway or private road	30
of the supervisor to the list (<i>see Township Organization</i>)	53, 54
ALLEYS,	
streets and (<i>see Streets</i>)	151-154
ALLOWANCE (P. O.)	
may be made by the supervisor for amount paid for persons appointed to warn in the hands	54
ALTERING A ROAD	13, 102
(<i>see Township Organization</i>)	102-140
AMENDMENTS: (P. O.)	
record may be amended in suits brought for road labor, road tax, etc.	53
ANIMUS DEDICANDI	
must appear	3
ANNUAL REPORT, (P. O.)	
supervisors'	55, 56
commissioners and overseers' (T. O.)	72, 73, 93, 94
(<i>see Township Organization: Accounts</i>)	54, 55
APPEAL, (P. O.)	
by a county, may be made	33
from the award of the jury to the circuit court, whose decision shall be final	36
from the county commissioners' report	26
in suits brought for road tax	52
T. O.	
from the verdict of the jury to three supervisors	132-135
three supervisors to be summoned to hear appeal	135
procedure prescribed	139-144
APPLICATION (P. O.)	
for a new road to be signed by thirty-five voters of the county residing within five miles of proposed route ..	13
the hearing and procedure	16-24
(T. O.)	102-151
at least twelve freeholders of the town to apply	102-108
APPLICATIONS (P. O.)	
to be made to the board of county commissioners for matters concerning location or vacation of roads	16
to the commissioners of highways (P. O.)	103, 104, 105
APPOINTMENT	
of viewers	16
order appointing	19
ASSESSMENT OF DAMAGES	
by a jury, how arrived at (P. O.)	35, 36
(T. O.)	119-123

AUTHORITY, LEGISLATIVE,	
highways may be created by	1
BOARD,	
the, of county commissioners	59, 60
53. Jurisdiction over and concerning state roads conferred on county courts; but after their election the board of county commissioners (Const. 1870, § 6, art. 10) is to accede to such jurisdiction	59
54. Railroad companies to be notified	59, 60
55. Notices to be served on nearest station agents	60
56. Money collected under the highway act of 1872 to be expended for highways	60
57. The act of April 10, 1872, and former conflicting acts, repealed	60
58. Emergent	60
to supersede the county court in county matters	59
BOARD OF SUPERVISORS,	
list to be laid before the, when and how	95
to cause levy and collection of tax	95
BRIDGE REGULATIONS,	
driving faster than a walk	40, 41, 100
BRIDGES	159-163
are but streets or highways over water	14
to be put in good repair	57
(T. O.)	143, 146
toll	176
CALLING OUT THE HANDS	46
warning (<i>see Notice</i>)	47
CANALS,	
see railways and	164-173
CARRIAGE	
defined	11, 64
CARRIERS,	
liabilities of, for injuries on the road	10, 11, 63
CARTWAY	
or private road, how to be acquired prescribed, 28, 130, 131. 178	
CHANGE	
and relocation, application may be made for	31, 102-105
CIRCUIT COURT,	
decision to be final on appeal	36
see pages	102-151
CLAIM	
for damages	24
must be promptly and properly made, or it will be void,	36
when to be made	19, 118, 119, 120
CLERK	
to notify appointed supervisors through the sheriff	43
form of notice, etc	44
to make for the grand jury a list of names of the supervisors	58

CLERK, TOWN,	
to furnish lists	74
plat, etc. (<i>see Notice</i>)	96
COACHES,	
hackney	11, 64
COLLISION	6, 11, 61, 62
COMMISSIONERS,	
the board of county, to supersede the county court in county matters	59
order of, essential to establishment of a new road, under the act of 1835	16
COMMISSIONERS OF HIGHWAYS,	
their powers and duties	65-79
COMMON CARRIERS,	
liability of	10, 11, 63
COMMUTATION,	
labor and	49, 84, 85
COMPANY, RAILROAD,	
notices to be served on, when and how	40
COMPENSATION,	
private property shall not be taken for public use without just	2
compensation for private property must invariably be made	15
to be determined by a jury	2
of sheriffs, county clerks, viewers, surveyors, and supervisors to be fair and reasonable	59
(<i>see Primary Organization ; Township Organization.</i>)	
CONTRACTS	
may be made by the supervisors (of roads) (P. O.)	56, 57
overseers' (T. O.)	81
CONTRIBUTIVE NEGLIGENCE	11, 63, 64
CORPORATE	
name of the county to be used in suits (P. O.)	53
name of the town to be used in, under T. O.	86-89
COUNTY,	
division of the, into road districts (P. O.)	42
division of, into road districts (P. O.)	67
COUNTY CLERK,	
his notice to the supervisors ; sheriff to serve it ; the return	43
to make a list of the supervisors for each grand jury ..	58
COUNTY CLERKS,	
their compensation under road law (P. O.)	59
certificate of, to treasurer of commissioners of high- ways	150
COUNTY COMMISSIONERS (P. O.)	
the board of, to supersede "the county court"	59
order essential to establishment of a new road under the act of 1835	16

COUNTY COURT, (P. O.)

the, or the board of county commissioners (art. 10, § 6, Const. 1870) — jurisdiction; supervisors (of roads) — 41–51

28. Board of county commissioners, vested with the general superintendence over public roads, may cause new roads to be located, and to alter or vacate roads within their respective counties — 41, 42

29. At the December term annually to divide their respective counties into road districts, and appoint a supervisor for each road district; first supervisors, however, to be immediately appointed, and districts to be made — 42, 43

30. Notice of their appointment to be served by the sheriff on the several supervisors, accepting which they are each to return a poll list within fifteen days to the county clerk; sheriff's return; fines for nonfeasance and misfeasance of the county clerk and sheriff prescribed — 43, 44

31. Failure of supervisor to accept, mulcts him in a fivedollar fine, for the benefit of roads; the county court may excuse him, and create vacancies, and shall fill them promptly at the term when they occur — 45

32. Duties of the supervisor detailed and prescribed; to maintain and properly keep roads and bridges in his district in good repair, together with guide boards, etc. — 45

33. To remove obstructions, repair and rebuild roads and bridges, and call out the persons owing road labor for such purpose to perform it; if the expense will not exceed ten dollars, may hire; if it will, then he is to report for instructions to the board of county commissioners — 46, 47

34. The county court, at the December term in each year, to prescribe road labor for the able-bodied males between the ages of twenty-one and fifty, to be certified to each supervisor — 47

35. Road tax not exceeding twenty cents on each one hundred dollars of taxable property within the county may be assessed by the county court annually, at the September term; tax book; but the tax system as a whole may be adopted — 47, 48

36. The labor system, *modus operandi*, tax list to be made by the clerk and delivered through the sheriff to the supervisor of every road district, under prescribed penalties for failure, etc. — 48

37. Supervisor to give three days' notice; work, how performed, etc. — 49

38. The tax list; notice to be given; work, how performed, etc. — 50

39. Incorporated cities, towns and villages; the charter to govern in the matter of highway labor and taxes — 51

jurisdiction full and ample over state and other roads — 50

COUNTY SURVEYOR

qualified *ex-officio* to act as road viewer (*see Survey*) — 35

CREATION OF HIGHWAYS

by legislative authority	1
by dedication	2
by necessity	3
<i>(see Primary Organization ; Township Organization.)</i>	

DAMAGES,

claim for	24
adjustment	37
agreement for	19, 20
release of	19, 20
assessment of by a jury, how arrived at	36
verdict of a jury assessing	33
must be paid before road can be worked, <i>i. e.</i> opened ..	3
resulting from collision	11, 61, 62
for obstruction of highway	6
for drainage etc.	56, 57
<i>(see Obstruction ; Compensation.)</i>	

DAYS' LABOR FIXED,

order for the purpose	47, 74, 75
-----------------------------	------------

DEBT,

action of, prescribed for recovery of penalty for ob- structing a highway	39, 97, 98
--	------------

DECEMBER,

supervisor to collect and have labor performed by first Monday of <i>(see October)</i>	53
---	----

DECLARATION

of owner of intention to dedicate	2
---	---

DEDICATION

by making plat	39
for a footway, horseway or driftway	3
ingredients of the evidence of <i>(see Highway)</i>	2

DEFINITION

of carriage	11, 64
of highway	1, 12, 61

DEPOSIT

of expenses of a view by applicants for a new road	14
---	----

DESCRIPTION

of route of a new road	27
------------------------------	----

DISTRICTS, (P. O.)

order dividing a county into	42
road, to be made in 1873 at June term of county court ..	42
road, when to be made in June, 1873, first at the De- cember term afterwards	42

(T. O.)

commissioners of highways to divide their town into ..	67
--	----

DITCHES,

sluices, drains and water-courses to be made ..	56, 57, 100-102
---	-----------------

DIVISION OF THE COUNTY

into road districts at the December session	42, 67
---	--------

DOMAIN,

eminent, the right of	154
-----------------------------	-----

DRAINS,	
ditches, sluices and water-courses to be made	56, 57, 100-102
DRIVERS	
addicted to drunkenness not to be employed	9, 62
DRIVING	
fast, prohibited	10, 63
furious, an indictable offense	6
DRUNKENNESS,	
driver addicted to, not to be tolerated	9, 63
DUE CARE	61, 62
EASEMENT,	
a highway is but an	3
EJECTMENT	
will lie by owner of the fee for encroachments on highway	4
EMERGENCY	
for the act of April 18, 1873.	60
for the act of April 11, 1873.	151
EMINENT DOMAIN,	
the right of	154
EQUESTRIANS	
not bound to turn to the right	6
EQUITABLE ESTOPPEL,	
acts and declarations relative to dedication	3
ESTOPPEL,	
if damages be not promptly and aptly claimed on notice, will ensue	36, 37
party owning land and permitting public use thereof for a highway may estop himself from reclaiming it	3
EVIDENCE	
of dedication	2
weight of, in causes for obstructing highway	39
EXEMPTIONS	51
EXPENSES OF VIEW	
to be deposited	14
FAST DRIVING	
an indictable offense at common law	6
prohibited	10, 63
FEE OF HIGHWAY	
is usually in the owners of adjoining property	3
FENCE,	
any person may remove one from a highway	39
supervisor's notice to remove	38
commissioner's notice	147, 148
FERRIES, RIVERS AND	155-163
FINE	
against supervisor for nonfeasance from \$5 to \$50	58
for plowing up highway or turning a current of water into it	40
supervisor liable for, in case he lends plows, scrapers, etc.	58

FINES AND PENALTIES (<i>see Suits</i>).....	85-89
FOOT PASSENGERS	
not bound to turn to the right	6
FOOTWAY,	
there may be a dedication for	3
FREEHOLDER	
may apply, when, and for a cart road, (P. O.)	28
private ways (<i>see Township Organization: Private Ways</i>)	130, 131
FREEHOLDERS,	
twelve at least of the town, to apply by petition to open, alter or vacate a road (T. O.)	103-105
FRUIT TREES	
growing on highway belong to the owner of the fee	4
GRAND JURY,	
each term of the circuit court to have a list of the supervisors	58
HACKNEY COACHES	11, 64
HANDS,	
calling them out (P. O.)	46
the warning	47
the supervisor to call out	50
may pay persons to warn in	54
(T. O.)	81
HIGHWAY (<i>see Primary Organization; Township Organization</i>)	
defined	1
defined by the statute	12, 61
the generic name for all kinds of public ways	1
notice, application for new road or alteration of a road	18
laid out, order of the county board necessary	23
when deemed to be laid out under the statute	26
HIGHWAYS GENERALLY	1-7
1. Defined; kinds of ways	1
2. Their creation	1, 2
1. By legislative authority	1, 2
2. By dedication, user	2
3. By necessity	3
3. Their nature, easements or servitudes	3, 4
4. Their establishment, maintenance, repair	4, 5
5. Obstructions, nuisances	5, 6
6. Scope of the subject	6, 7
HIGHWAYS, ROADS, NEW ROADS, LOCATION AND RELOCATION (P. O.)	11-41
9. Roads laid out pursuant to law, not vacated and if used within five years, declared highways	12, 61
10. Petition of at least thirty-five voters (except in counties of less than three hundred voters, when fifteen shall be enough,) to the county court necessary to inaugurate the opening of a new road; applicants to deposit money to pay for viewing, to be refunded if the road be recommended by viewers	13-15

HIGHWAYS, ROADS, NEW ROADS, ETC.—Continued

11. The county court to inquire as to the getting up of the petition, concerning the signers and their interest in the road, and if notice of the application has been given 16
12. The court to pass on the merits of the application, and if of the opinion that the public good and convenience require it, shall appoint three disinterested viewers, who, if they also be of the same opinion, shall proceed to locate the road — procedure prescribed — and make the report if they deem the road necessary 17–19
13. Viewers' report 19–24
14. Proceeding to vacate a useless or burdensome road prescribed; the petition, the notice, deposit for cost, etc. 24–26
15. Opening a new road, how it shall be accomplished 27
16. Cart road, how to be obtained for private use 28–31
17. Petition for change, relocation, and proceeding prior and subsequent to the same 31, 32
18. Roads on county lines; joint proceedings prescribed for laying out a new road or changing location, or vacating a road on such lines 32, 33
19. Remonstrances may be presented and considered, with the authorized applications for or concerning roads, to the county court 33, 34
20. Surveys of roads to be made, plats returned, with the report of the viewers, and a record made 34
21. The viewers to be sworn; their duties generally .. 34, 35
22. County surveyors may act without further qualification, and administer oaths to associates 35
23. Persons and corporations over whose lands roads pass, may object if they cannot agree with the county authorities as to damages, whereupon the county court is to call a jury of six freeholders to view and assess; appeal may be taken to the circuit court, whose decision is to be final; procedure prescribed 35, 36
24. Obstructing highways or private road, injuring guide boards, milestones, etc.; penalties prescribed .. 36–38
25. Complaint or information of any such offense cognizable by any justice of the peace of the county ... 38–40
26. Flooding highways or private roads prohibited; penalties 40
27. Driving, riding, etc., on or across a bridge faster than a walk, an offense; penalty for each offense, five dollars; procedure, indictment on complaint or information 40, 41

HIGHWAYS, COMMISSIONERS OF,

their powers and duties 65–79

HIGHWAYS, OVERSEERS OF,

their powers and duties 79–83

HIGHWAY TAXES,

enforcement of, under T. O. (*see Primary Organization*) 89–92

HORSES

to be hitched if left unattended 10, 63

IDLE, THE	
turbulent, hinderers, and disobedient, to be discharged and compelled to pay one dollar fifty cents per day--	49, 85
IMPASSABLE,	
if a highway be, the public have a right to pass in another line over private property-----	3
IMPLIED ACQUIESCENCE-----	2
INCORPORATED	
towns and cities, the charters of, to control as to high- way taxes and labor-----	51
INDEMNITY	
for land taken for public use (<i>see Compensation</i>)-----	2
INJUNCTION	
may be had when the statute makes no provision for just compensation-----	2
allowed to prevent a threatened inclosure of a highway	39
INJURY, WILLFUL,	
on the road-----	11, 64
INTENTION	
to dedicate or estoppel must be shown-----	3
JURISDICTION	
of justice of the peace-----	11
of the county court over state and other roads, full and ample-----	59
of the county court over county affairs to be superseded by the board of county commissioners-----	41
(<i>see Township Organization : Fines and Penalties</i>)----	85-89
JURY,	
compensation to be determined by-----	2
of six called ; damages assessed after view-----	36
grand, each to have a list of the supervisors-----	58
(T. O.)-----	118-123
JUSTICES OF THE PEACE,	
their jurisdiction to the amount of two hundred dollars	11
suits for road-labor, road tax and fines and forfeitures to be brought before by the supervisor-----	52
appeal from his decision to the circuit court-----	52
(<i>see Township Organization : Fines and Penalties</i>)----	85-89
JUSTIFICATION	
of an overseer or supervisor under the order, how made	35
LABOR,	
order fixing number of days'-----	47, 84, 85
LABOR AND COMMUTATION-----	49, 84, 85
LABOR SYSTEM,	
or tax system may be adopted-----	47, 84, 85
LAND	
taken for highways must be paid for (<i>see Compensation</i>)	2
LANE,	
a, cannot be forced upon the public as a highway-----	14
LAW OF THE ROAD-----	6, 8, 61, 62

LEGISLATION

relative to roads in Illinois (*see Statutes*) 8

LEGISLATIVE AUTHORITY,

highways created by 1, 7-60, 61-151

LIABILITY

of common carriers 10, 11, 63, 64

LIST

of supervisors to be made by the clerk for each grand
jury 58
(*see Town Clerk*) 74

LIST, TAX

..... 48, 74

LOCATION,

the survey and plat is evidence of 15, 141, 142

MEET,

when carriages on the highway, turn to the right when
practicable 8, 61, 62

MEETING,

parties in, must bear to the right 6, 62

MISCELLANEOUS PROVISIONS (P. O.) 53-59

43. Road labor and taxes to be performed, and col-
lected annually by the first Monday of December... 53, 54

44. Each supervisor to make a report as prescribed, and
settle with the court annually at the December term 54-56

45. The supervisors authorized to enter on lands to
make ditches, sluices, drains and water-courses; dam-
ages, how assessed and paid 56, 57

46. Teams may be employed to haul, plow and scrape,
and contracts made for tools, implements and ma-
chinery by the supervisors, under the direction of
the county court 57, 58

47. Penalty prescribed for nonfeasance of the super-
visor 58

48. The county clerk is to furnish, at each term of the
circuit, a list of the names of the supervisors to the
grand jury 58

49. The supervisors must take good care of plows,
scrapers and other tools and machinery of the
county; penalty for nonfeasance 58

50. One-half of the labor to be done by the tenth day
of June in each year 58

51. Compensation of the county clerk, surveyor, viewers
and supervisors to be reasonable, and paid by allow-
ance and the order of the county court out of the
county treasury 59

52. Jurisdiction over and concerning state roads con-
ferred on county courts 59

(T. O.) 95, 96

MONEY

deposited for a view to be refunded if report be favorable 14

NAME, (P. O.)

corporate, of the county to be used in bringing suits 53

highway the generic, for all kinds of public ways 1

of town to be used (T. O.) 86

NATURE OF HIGHWAYS,	
easements or servitudes	3
NECESSITY,	
when a highway may be created by	3
NEGLIGENCE	11, 61, 62
NEW ROAD, (P. O.)	
application for	13
petition for (<i>see Petition</i>)	16-24
(<i>see Township Organization</i>)	103, 104, 105, etc.
(<i>see Petition</i>)	
NEW YORK STATUTES	
adopted, with their interpretation	7
NONFEASANCE, (P. O.)	
of supervisor renders him liable to indictment	58
of overseer, penalty for	83
NOTICE, (P. O.)	
of application for a cartway or private road	29
of application for a new road	17, 18
of application, two forms of, given	17, 18
of application to be inquired into	16
to be served, and how, on railroad companies	59, 60
from the clerk to the supervisor; service of; return ..	44
the supervisors	50
(<i>see Township Organization: Application</i>)	130, 131
(<i>see Private Way</i>)	76-78
NUISANCE,	
failure to repair renders authorities liable to indict-	
ment for	5
OBSTRUCTION OF HIGHWAY	
a common law nuisance	5, 36-41
OCTOBER,	
road labor to be performed and tax collected by the	
first of (<i>see Township Organization</i>)	
OFFICE, TOWN CLERK'S.	
commissioners to meet at	73
ORDER, (P. O.)	
appointing viewers	19
of the county commissioners, essential to establishment	
of a new road under act of 1835	16
relocating necessary	32
appointing viewers for a private way	30
dividing a county into road districts	42
filling a vacancy in the office of supervisor of highways	45
fixing the number of days' labor annually	47
(<i>see Township Organization: Alteration, Vacation and</i>	
<i>Establishment of Roads</i>)	103-148
ORGANIZATION,	
roads and bridges in counties under primary	7-60
roads and bridges in counties under township	7, 61-151
OVERSEERS OF HIGHWAYS,	
compensation of	79-83

OWNER

continuing drunken driver in his employ to forfeit \$5 per day	10, 62
proof of dedication by, depends on the intent, express or implied	2, 3

“PAID”:

when tax is paid, the word to be written after the name in the list	53, 90
--	--------

PENALTY (P. O.)

for refusing to serve as a supervisor	45
for failure to notify supervisors	43, 44
party must be prosecuted civilly for obstructing high- way	38
(T. O.)	85-89

PETITION, (P. O.)

for a cartway or private road	29
for change or relocation of a road	32
for a new road	13
for a new road	16, 17
the notice	17, 18
affidavit of posting	18
order appointing viewers	19
agreement for damages	20
release of damages	21
unfavorable report	22
favorable report	21-23
the order establishing the road	23, 24
presentation of, duty of the court on	16
to vacate a useless road	25
(see <i>Township Organization : Application</i>) ..	103-148, 130, 131

PLANK ROAD

company cannot close up a highway to prevent diver- sion of travel	39
---	----

PLANK ROADS

are highways	14
--------------------	----

PLAT,

dedication by making	39
survey, report	34
(T. O.)	141, 142

PLOWS,

scrapers and tools to be cared for by the supervisor ..	58
not to be lent	58
(see <i>Overseers of Highways</i>)	79-83

POLL TAX

not prohibited	51
(T. O.)	74

POSTING, (P. O.)

affidavit of	18
(T. O.)	107

POWERS AND DUTIES

of supervisors of highways	45
overseers of highways	79-83
commissioners of	65-79

PRESENTATION

of a petition to locate or relocate a road, (P. O.)	16
(T. O.)	102-148

PRIMARY ORGANIZATION 7-60

(see <i>Township Organization</i>)	61-151
-------------------------------------	--------

ABANDONMENT OF HIGHWAY	13, 14
on, soil reverts to owner	4

ABATEMENT OF NUISANCE	5
-----------------------	---

ACCEPTANCE OF DAMAGES

by owner, a waiver of all further question	34
--	----

ACCEPTANCE OF HIGHWAY

by the public, user the proper proof of	3
---	---

ACCEPTANCE OF OFFICE

by supervisor, return of, by sheriff	47
--------------------------------------	----

ACCIDENTS	6
-----------	---

ACCOMMODATION

by travelers of each to the other	6
-----------------------------------	---

ACQUIESCENCE

of owner in public use of his property	2
--	---

ACQUISITION OF HIGHWAY,

the modes of pointed out	15
--------------------------	----

ACTION

for fines, etc. (see <i>Suits</i>)	52
-------------------------------------	----

ACT OF APRIL 10, 1872,

repealed	60, 150
----------	---------

tax collected under, how to be expended	60, 150
---	---------

ACT OF APRIL 11, 1873	7, 61-151
-----------------------	-----------

ACT OF APRIL 18, 1873	7-60
-----------------------	------

emergent	60
----------	----

ADJUSTMENT OF DAMAGES	37
-----------------------	----

AFFAIRS, COUNTY,

jurisdiction of the county court over	41
---------------------------------------	----

AFFIDAVIT

of posting notice of application for a road	18
---	----

of service and posting notice for a cartway or private road	30
---	----

of the supervisor to the list	53, 54
-------------------------------	--------

ALLOWANCE

may be made by the supervisor for amount paid for persons appointed to warn in the hands	54
--	----

ALTERING A ROAD	13
-----------------	----

AMENDMENTS:

record may be amended in suits brought for road labor, road tax, etc.	52
---	----

ANIMUS DEDICANDI

must appear	3
-------------	---

ANNUAL REPORT,

supervisors'	55, 56
--------------	--------

APPEAL

by a county may be made	33
-------------------------	----

from the award of the jury to the circuit court, whose decision shall be final	36
--	----

from the county commissioners' report	26
---------------------------------------	----

in suits brought for road tax	52
-------------------------------	----

PRIMARY ORGANIZATION — Continued.

APPLICATION	
for a new road to be signed by thirty-five voters of the county residing within five miles of proposed route.....	13
the hearing and procedure.....	16-24
APPLICATIONS	
to be made to the board of county commissioners..	16
APPOINTMENT	
of viewers.....	16
order appointing	19
ASSESSMENT OF DAMAGES	
by a jury, how arrived at.....	35, 36
AUTHORITY, LEGISLATIVE,	
highways may be created by.....	1
BOARD,	
the, of county commissioners	59, 60
53. Jurisdiction over and concerning state roads conferred on county courts; but after their elec- tion the board of county commissioners (Const. 1870, § 6, art. 10) is to accede to such jurisdiction	59
54. Railroad companies to be notified	59, 60
55. Notices to be served on nearest station agents..	60
56. Money collected under the highway act of 1872 to be expended for highways.....	60
57. The act of April 10, 1872, and former conflict- ing acts, repealed	60
58. Emergent	60
to supersede the county court in county matters..	59
BRIDGE REGULATIONS,	
driving faster than a walk.....	40, 41
BRIDGES	
are but streets or highways over water.....	14
to be put in good repair.....	58
CALLING OUT THE HANDS.....	46
warning.....	47
CARRIAGE	
defined	11
CARRIERS,	
liabilities of, for injuries on the road.....	10, 11
CARTWAY	
or private road, how prescribed by statute	28
CHANGE	
and relocation, application may be made	31
CIRCUIT COURT,	
decision to be final on appeal.....	36
CLAIM	
for damages	24
must be promptly and properly made, or it will be waived	36
when to be made.....	19
CLERK	
to notify appointed supervisors through the sheriff	43
form of notice, etc.....	44
to make for the grand jury a list of names of the supervisors	58

PRIMARY ORGANIZATION — Continued.

COACHES,	
hackney	11
COLLISION	6-11
COMMISSIONERS,	
the board of county, to supersede the county court	
in county matters	59
order of, essential to establishment of a new road,	
under the act of 1835	16
COMMON CARRIERS,	
liability of	10, 11
COMPANY, RAILROAD,	
notices to be served on, when and how	60
COMPENSATION,	
private property shall not be taken for public use	
without just	2
compensation for private property must invariably	
be made	14
to be determined by a jury	2
of sheriffs, county clerks, viewers, surveyors, and	
supervisors to be fair and reasonable	59
CONTRACTS	
may be made by the supervisors	56, 57
CONTRIBUTIVE	
negligence	11
CORPORATE	
name of the county to be used in suits	53
COUNTY,	
division of the, into road districts	42
COUNTY CLERK,	
his notice to the supervisors; sheriff to serve it;	
the return	43
to make a list of the supervisors for each grand	
jury	58
COUNTY CLERKS,	
their compensation	59
COUNTY COMMISSIONERS,	
the board of, to supersede "the county court"	59
order essential to establishment of a new road	
under the act of 1835	16
COUNTY COURT,	
the, or the board of county commissioners (art. 10,	
§ 6, Const. 1870)—jurisdiction; supervisors (of	
roads)	41-51
28. Board of county commissioners, vested with	
the general superintendence over public roads,	
may cause new roads to be located, and to alter	
or vacate roads within their respective counties	41, 42
29. At the December term annually to divide their	
respective counties into road districts, and ap-	
point a supervisor for each road district; first	
supervisors, however, to be immediately appoint-	
ed, and districts to be made	42, 43

PRIMARY ORGANIZATION — COUNTY COURT — Continued.

30. Notice of their appointment to be served by the sheriff on the several supervisors, accepting which they are each to return a poll list within fifteen days to the county clerk; sheriff's return; fines for nonfeasance and misfeasance of the county clerk and sheriff prescribed	43, 44
31. Failure of supervisor to accept, mulcts him in a five dollar fine, for the benefit of roads; the county court may excuse him, and create vacancies, and shall fill them promptly at the term when they occur	45
32. Duties of the supervisor detailed and prescribed; to maintain and properly keep roads and bridges in his district in good repair, together with guide boards, etc.	45
33. To remove obstructions, repair and rebuild roads and bridges, and call out the persons owing road labor for such purpose to perform it; if the expense will not exceed ten dollars, may hire; if it will, then he is to report for instructions to the board of county commissioners	46, 47
34. The county court, at the December term in each year, to prescribe road labor for the able-bodied males between the ages of twenty-one and fifty, to be certified to each supervisor	47
35. Road tax not exceeding twenty cents on each one hundred dollars of taxable property within the county may be assessed by the county court annually, at the September term; tax book; but the tax system as a whole may be adopted	47, 48
36. The labor system, <i>modus operandi</i> , tax list to be made by the clerk and delivered through the sheriff to the supervisor of every road district, under prescribed penalties for failure, etc.	48
37. Supervisor to give three days' notice; work, how performed, etc.	49
38. The tax list; notice to be given; work, how performed, etc.	50
39. Incorporated cities, towns and villages; the charter to govern in the matter of highway labor and taxes	51
Jurisdiction full and ample over state and other roads	59
COUNTY SURVEYOR	
qualified <i>ex-officio</i> to act as road viewer	35
CREATION OF HIGHWAYS	
by legislative authority	1
by dedication	2
by necessity	3
DAMAGES,	
claim for	24
adjustment	37
agreement for	19, 20

PRIMARY ORGANIZATION — DAMAGES — Continued.

release of	19, 10
assessment of, by a jury, how arrived at	36
verdict of a jury assessing	33
must be paid before road can be worked, <i>i.e.</i> opened	3
resulting from collision	11
for obstruction of highway	6
for drainage, etc	56, 57
DAYS' LABOR FIXED, order for the purpose	47
DEBT, action of, prescribed for recovery of penalty for obstructing a highway	39
DECEMBER, supervisor to collect and have labor performed by first Monday of	53
DECLARATION of owner of intention to dedicate	2
DEDICATION by making plat	39
for a footway, horseway or driftway	3
ingredients of the evidence of	2
DEFINITION of carriage	11
of highway	1, 12
DEPOSIT of expenses of a view by applicants for a new road	14
DESCRIPTION of route of a new road	27
DISTRICTS, order dividing a county into	42
road, to be made in 1873, at June term of county court	42
road, when to be made in June 1873, first at the December term afterwards	42
DITCHES, sluices, drains and water-courses to be made	56, 57
DIVISION OF THE COUNTY into road districts at December session	42
DRAINS, ditches, sluices and water-courses to be made	56, 57
DRIVERS addicted to drunkenness not to be employed	9
DRIVING fast, prohibited	10
furious, an indictable offense	6
DRUNKENNESS, driver addicted to, not to be tolerated	9
DUE CARE	11
EASEMENT, a highway is but an	3
EJECTMENT will lie by owner of the fee for encroachments on highway	4

PRIMARY ORGANIZATION — Continued.

EMERGENCY	
for the act of April 18, 1873.	60
EQUESTRIANS	
not bound to turn to the right.	6
EQUITABLE ESTOPPEL,	
acts and declarations relative to dedication.	3
ESTOPPEL,	
if damages be not promptly and aptly claimed on notice, will ensue.	36, 37
party owning land and permitting public use thereof for a highway may estop himself from reclaiming it.	3
EVIDENCE	
of dedication.	2
weight of, in causes for obstructing highway.	39
EXEMPTIONS.	51
EXPENSES OF VIEW	
to be deposited.	14
FAST DRIVING	
an indictable offense at common law.	6
prohibited.	10
FEE OF HIGHWAY	
is usually in the owners of adjoining property.	3
FENCE,	
any person may remove one from a highway.	39
supervisor's notice to remove.	38
FINE	
against supervisor for nonfeasances from \$5 to \$50	58
for plowing up highway or turning a current of water into it.	40
supervisor liable for, in case he lends plows, scrapers, etc.	58
FOOT PASSENGERS	
not bound to turn to the right.	6
FOOTWAY,	
there may be a dedication for.	3
FREEHOLDER	
may apply, when, and for a cart road.	28
FRUIT TREES	
growing on highway belong to the owner of the fee	4
GRAND JURY,	
each term of the circuit court to have a list of the supervisors.	58
HACKNEY COACHES.	11
HANDS,	
calling them out.	46
the warning.	47
the supervisor to call out.	57
may pay persons to warn in.	54
HIGHWAY	
defined.	1
defined by the statute.	12
the generic name for all kinds of public ways.	1

PRIMARY ORGANIZATION — HIGHWAY — Continued.

notice — application for new road or alteration of a road	13
laid out, order of the county board necessary	23
when deemed to be laid out under the statute	26
HIGHWAYS GENERALLY	1-7
1. Defined kinds of ways	1
2. Their creation	1, 2
1. By legislative authority	1, 2
2. By dedication, user	2
3. By necessity	3
3. Their nature, easements or servitudes	3, 4
4. Their establishment, maintenance, repair	4, 5
5. Obstructions, nuisances	5, 6
6. Scope of the subject	6, 7
HIGHWAYS, ROADS, NEW ROADS, LOCATION AND RELOCATION	11-41
9. Roads laid out pursuant to law, not vacated and if used within five years, declared highways	12
10. Petition of at least thirty-five voters (except in counties of less than three hundred voters, when fifteen shall be enough,) to the county court necessary to inaugurate the opening of a new road; applicants to deposit money to pay for viewing, to be refunded if the road be recommended by viewers	13-15
11. The county court to inquire as to the getting up of the petition, concerning the signers and their interest in the road, and if notice of the application has been given	16
12. The court to pass on the merits of the application, and if of the opinion that the public good and convenience require it, shall appoint three disinterested viewers, who, if they also be of the same opinion, shall proceed to locate the road — procedure prescribed — and make the report if they deem the road necessary	17-19
13. Viewers' report	19-24
14. Proceeding to vacate a useless or burdensome road prescribed; the petition, the notice, deposit for cost, etc.	24-26
15. Opening a new road, how it shall be accomplished	27
16. Cart road, how to be obtained for private use	28-31
17. Petition for change, relocation, and proceeding prior and subsequent to the same	31, 32
18. Roads on county lines; joint proceedings prescribed for laying out a new road or changing location, or vacating a road on such lines	32, 33
19. Remonstrances may be presented and considered, with the authorized applications for or concerning roads, to the county court	33, 34
20. Surveys of roads to be made, plats returned, with the report of the viewers, and a record made	34

PRIMARY ORGANIZATION — HIGHWAYS, ROADS, ETC.—
Continued.

21. The viewers to be sworn; their duties generally	34, 35
22. County surveyors may act without further qualification, and administer oaths to associates,	35
23. Persons and corporations over whose lands roads pass, may object if they cannot agree with the county authorities as to damages, whereupon the county court is to call a jury of six freeholders to view and assess; appeal may be taken to the circuit court, whose decision is to be final; procedure prescribed	35, 36
24. Obstructing highways or private road, injuring guide boards, mile stones, etc.; penalties prescribed	36-38
25. Complaint or information of any such offense cognizable by any justice of the peace of the county	38-40
26. Flooding highways or private roads prohibited; penalties	40
27. Driving, riding, etc., on or across a bridge faster than a walk, an offense; penalty for each offense, five dollars; procedure, indictment on complaint or information	40, 41
HORSES	
to be hitched if left unattended	10
IDLE, THE,	
turbulent, hinderers, and disobedient, to be discharged and compelled to pay one dollar and fifty cents per day	49
IMPASSABLE,	
if a highway be, the public have a right to pass in another line over private property	3
IMPLIED ACQUIESCENCE	2
INCORPORATED	
towns and cities, the charters of, to control as to highway taxes and labor	51
INDEMNITY	
for land taken for public use	2
INJUNCTION	
may be had when the statute makes no provision for just compensation	2
allowed to prevent a threatened inclosure of a highway	39
INJURY, WILLFUL,	
on the road	11
INTENTION	
to dedicate or estoppel must be shown	3
JURISDICTION	
of justice of the peace	11
of the county court over state and other roads, full and ample	59
of the county court over county affairs to be superseded by the board of county commissioners	41

PRIMARY ORGANIZATION — Continued.

JURY,	
compensation to be determined by	2
of six called; damages assessed after view	36
grand, each, to have a list of the supervisors	58
JUSTICES OF THE PEACE,	
their jurisdiction to the amount of two hundred dollars	11
suits for road labor, road tax, and fines and forfeit- ures to be brought before, by the supervisor	52
appeal from his decision to the circuit court	52
JUSTIFICATION,	
of an overseer or supervisor under the order, how made	35
LABOR,	
order fixing number of days'	47
LABOR SYSTEM,	
or tax system may be adopted	47
LAND	
taken for highways must be paid for	2
LANE,	
a, cannot be forced upon the public as a highway	14
LAW OF THE ROAD	6, 8
LEGISLATION	
relative to roads in Illinois	8
LEGISLATIVE AUTHORITY,	
highways created by	1
LIABILITY	
of common carriers	10, 11
LIST	
of supervisors to be made by the clerk for each grand jury	58
LIST, TAX	48
LOCATION,	
the survey and plat is evidence of	15
MEET,	
when carriages on the highway, turn to the right when practicable	8
MEETING,	
parties in, must bear to the right	6
MISCELLANEOUS PROVISIONS	53-59
43. Road labor and taxes to be performed and col- lected annually by the first Monday of December	53, 54
44. Each supervisor to make a report as prescribed, and settle with the court annually at the Decem- ber term	54-56
45. The supervisors authorized to enter on lands to make ditches, sluices, drains, and water-courses; damages, how assessed and paid	56, 57
46. Teams may be employed to haul, plow, and scrape, and contracts made for tools, implements and machinery by the supervisors, under the direction of the county court	57, 58
47. Penalty prescribed for nonfeasance of the supervisor	58

PRIMARY ORGANIZATION — MISCELLANEOUS PROVISIONS — Continued.

48. The county clerk is to furnish, at each term of the circuit, a list of the names of the supervisors to the grand jury	58
49. The supervisors must take good care of plows, scrapers and other tools and machinery of the county; penalty for nonfeasance	58
50. One-half of the labor to be done by the tenth day of June in each year	58
51. Compensation of the county clerk, surveyor, viewers and supervisors to be reasonable, and paid by allowance and the order of the county court out of the county treasury	59
52. Jurisdiction over and concerning state roads conferred on county courts	59
MONEY	
deposited for a view to be refunded if report be favorable	14
NAME,	
corporate, of the county to be used in bringing suits	53
highway the generic, for all kinds of public ways	1
NATURE OF HIGHWAYS,	
easements of servitudes	3
NECESSITY,	
when a highway may be created by	3
NEGLIGENCE	11
NEW ROAD,	
application for	13
petition for (<i>see Petition</i>)	16-24
NEW YORK STATUTES	
adopted, with their interpretation	7
NONFEASANCE	
of supervisor renders him liable to indictment	58
NOTICE	
of application for a cartway or private road	29
of application for a new road	17, 18
of application, two forms of, given	17, 18
of application to be inquired into	16
to be served, and how, on railroad companies	59, 60
from the clerk to the supervisor; service of; return	44
the supervisors	50
NUISANCE,	
failure to repair renders authorities liable to indictment for	5
OBSTRUCTION OF HIGHWAY,	
a common law nuisance	5, 36-41
ORDER	
appointing viewers	19
of the county commissioners essential to establishment of a new road under act of 1835	16
relocating necessary	32
appointing viewers for a private way	30
dividing a county into road districts	42

PRIMARY ORGANIZATION — ORDER — Continued.

filling a vacancy in the office of supervisor of high-ways	45
fixing the number of days' labor annually	47
ORGANIZATION,	
roads and bridges in counties under primary	7
roads and bridges in counties under township	7
OWNER	
continuing drunken driver in his employ to forfeit \$5 per day	10
proof of dedication by, depends on the intent, express or implied	2, 3
“PAID”:	
when tax is paid, the word to be written after the name in the list	53
PENALTY	
for refusing to serve as a supervisor	45
for failure to notify supervisors	43, 44
party must be prosecuted civilly for obstructing highway	38
PETITION	
for a cartway or private road	29
for change or relocation of a road	32
for a new road	13, 16, 17
the notice	17, 18
affidavit of posting	18
order appointing viewers	19
agreement for damages	20
release of damages	21
unfavorable report	22
favorable report	21-23
the order establishing the road	23, 24
presentation of, duty of the court on	16
to vacate a useless road	25
PLANK ROAD	
company cannot close up a highway to prevent diversion of travel	29
PLANK ROADS	
are highways	14
PLAT,	
dedication by making	39
survey, report	34
PLOWS,	
scrapers and tools to be cared for by the supervisor	58
not to be lent	58
POLL TAX	
not prohibited	51
POSTING,	
affidavit of	18
POWERS AND DUTIES	
of supervisors of highways	45
PRESENTATION	
of a petition to locate or relocate a road	16
PRIMARY ORGANIZATION,	
roads and bridges in counties under	7

PRIMARY ORGANIZATION — Continued.

PRIVATE PROPERTY,	
how taken for public use	2
PRIVATE ROAD,	
prescribed mode of laying out	28
PRIVATE WAY	
cannot be laid out against the objections of owners	30
PROCEDURE	
for obstructing a highway	38
PROOF OF DEDICATION	
depends upon the intent of the owner	3
PROPERTY,	
private, how taken for public use	2
QUI TAM	
against owner for employing a drunken driver...	9
RACING	
and furious driving prohibited	10
RAILROAD COMPANY,	
notice to be served upon, when and how	60
RAILWAYS	
are highways (Const. 1870)	13
REFUSAL	
of office by supervisor, return of	44
REGULATIONS,	
bridge	40, 41
REMEDY	
for obstructing a highway, complete, at law	38
REMONSTRANCE,	
form of	33
may be made, filed and heard	33
REPAIRS	
of highways	4-5
REPORT,	
unfavorable, when to be made by the viewers ...	16
favorable, if it be, deposit to be refunded	15
survey—plat	34
of the viewers, favorable	21-24
unfavorable	22
of supervisor	54, 56
RETURNS,	
sheriffs', on notice to supervisor of acceptance or refusal	44
RIGHT,	
turn to the, if practicable	6
ROAD,	
the law of the	6
common carriers, etc.	8, 10
1. Turn to the right if practicable	8
2. Intemperate or drunken drivers not to be employed	9
3. Driver guilty of becoming intoxicated on duty to be discharged ; passenger may, by complaint verified by oath to the proprietor, cause the discharge	9, 10

PRIMARY ORGANIZATION — ROAD — Continued.

4. Running horses or carriage on any occasion prohibited; a misdemeanor; penalty prescribed....	10
5. Horses to be securely hitched with a sufficient rope or halter.....	10
6. Carriers liable for injuries in damages.....	10, 11
7. "Carriage" defined — any vehicle used for the transportation of either passengers or goods....	11
8. This act not to affect hackney coaches in cities, nor ordinances relating to them.....	11
ROADS AND BRIDGES	
in counties * under primary organization.....	7, 60
I. The road, common carriers, etc.....	7, 11
II. Highways, new roads, location and relocation..	11, 41
III. The county court, or the board of county commissioners (Art. 10, § 6, Const. 1870) — jurisdiction; supervisors (of roads)	41-51
IV. Suits for road labor and road taxes.....	52
V. Miscellaneous provisions	53-59
VI. The board of county commissioners invested with county court jurisdiction in such matters; repeal, etc.	59, 60
ROADS,	
supervisor to construct	58
damages, assessment of.....	33
on county lines, how laid out, altered or vacated..	32
ROAD TAX,	
assessed.....	47
order.....	48
RULES	
of the road.....	6
SCOPE	
of this treatise stated.....	6, 7
SERVITUDE,	
a highway is.....	3
SETTLEMENT	
by the supervisor with the county commissioners..	54
SEWERAGE	
in highways or streets (<i>see Streets</i>)	4
SHERIFF'S	
return of acceptance by supervisor.....	44
of refusal	44
compensation of	59
SIDEWALKS	
are a part of the highway.....	14
SLUICES,	
ditches, drains and water-courses to be made.....	56, 57
SPEED,	
travelers bound to drive at a moderate rate of....	6

* An act in regard to cartways, roads and bridges in counties not under township organization. Laws 1873, Myers' Ed. p. 59.

An act in regard to roads and bridges in counties under township organization, approved and in force April 11, 1873. Laws 873, Myers' Ed. p. 30.

PRIMARY ORGANIZATION — Continued.

STATUTES OF NEW YORK

adopted, and their interpretation.....	7
c. 93 R. S.	6, 7
act April 18, 1873	7
act April 11, 1873	8

STEAM

may, by permission, be used as a motive power along the streets	15
--	----

SUBSTITUTE

may be provided to work out tax	49
---------------------------------------	----

SUITS

for road labor and taxes.....	52, 53
40. Supervisors to sue in the name of the county, and may testify ; appeal lies to the circuit court	52
41. The forum may be that of any justice of the peace of the county.....	52
42. The proceedings are to be instituted and pros- ecuted in the corporate name of the county ; formality and technicality as to corporate name not essential ; the record may be amended to correct it if wrongly pleaded or used.....	52, 53

SUPERVISOR

to be notified of establishment of a new road, and to open it if he have the necessary funds.....	27
notice	50
notice to remove fences.....	38
to remove obstructions and perform labor.....	46
affidavit to the list.....	54
his report.....	54, 55
settlement.....	54
to sue in the name of "The county of _____"; he may testify ; appeal.....	52
compensation	59
list of to be made for each grand jury.....	58

SUPERVISOR OF HIGHWAYS,

his appointment, notice to him ; acceptance or re- fusal ; powers and duties.....	43-45
--	-------

SURVEY

of a public road.....	15
of a route for a new road.....	21, 22
to be made by the viewers, and when.....	16
report, plat	34

SURVEYOR,

the county, may administer oaths to associates....	35
compensation	59

SYSTEM, LABOR

or tax, may be adopted	47
------------------------------	----

TAX,

the power to	50, 51
--------------------	--------

TAX LIST.....

48

TAX, ROAD,

order assessing.....	47, 48
----------------------	--------

TAX SYSTEM

or labor system may be adopted.....	47
-------------------------------------	----

PRIMARY ORGANIZATION — Continued.

TAX ALREADY COLLECTED,	
how disposed of	60
TEAMS,	
supervisor may hire the necessary	57, 58
“THE BOARD OF COUNTY COMMISSIONERS”	
to supersede the county court in matters relating to roads and bridges	59
THE COUNTY COURT,	
its jurisdiction over county affairs	41
TOLL,	
taking, evidence of duty to maintain a highway ..	
TOOL,	
every person to bring his, as notified	49
TOWNSHIP ORGANIZATION,	
roads and bridges in counties under	7
TRAVEL	
may slightly deviate from the thread of the road ..	14
TREES AND FRUIT	
growing on the highway belong to the owner of the fee	4
TRESPASS	
by owner of the fee will lie for digging up and removing the soil, etc.	4
TURN TO THE RIGHT, IF PRACTICABLE	8
UNFAVORABLE REPORT	
of viewers	16-22
UNPAID TAXES,	
supervisor to sue for	52
USELESS OR BURDENSOME ROAD	
may be vacated	24
USER,	
twenty years', acquiescence	2
VACANCY,	
when and how it may occur in office of supervisor, and how and when filled	45
VERDICT	
of a jury assessing damages	33
VIEW,	
expenses of, to be deposited	14
VIEWERS	
may be appointed	16
order appointing	19
order appointing for private way	30
when appointed, their powers and duties	16
to be sworn	35
their duties further prescribed	35
<i>modus operandi</i> of suggested	19
report	21-24
compensation	59
VOTERS,	
thirty-five residing in the county, within five miles of the road, to apply	26
VOUCHERS	
should be taken and kept by the supervisor	56

PRIMARY ORGANIZATION — Continued.

WATER-COURSES	
to be made	57
WAIVER	
by owner's acceptance of damages	34
WARNING	
by the supervisor	50
WAYS,	
kinds of, specified	1
WILLFUL INJURY	11
WORK,	
regulations for, prescribed	49
YEARS,	
twenty, essential usually to make a dedication by acquiescence	2
PRIVATE PROPERTY,	
how taken for public use	2, 16, 102-148
PRIVATE ROAD,	
prescribed mode of laying out	28, 130, 131, 176
PRIVATE WAY	
cannot be laid out against objections of owners, 30, 130, 131, 176	
PRIVATE WAYS	176, 178
1. A way is a passage, street or road	176
2. A right of way, by prescription, by necessity, by reservation, by custom, in gross, or appendant	176, 177
3. 'Twenty years' occupation adverse, a bar to the right	177, 178
4. The statute purporting to authorize the laying out of private ways against the objections of owners, unconstitutional	178
PROCEDURE	
for obstructing a highway	38, 97, 98
PROOF OF DEDICATION	
depends upon the intent of the owner	3
PROPERTY,	
private, how taken for public use	2
(<i>see Compensation ; Eminent Domain.</i>)	
QUI TAM	
against owner for employing a drunken driver	9, 62
(<i>see Fines and Penalties.</i>)	
RACING	
and furious driving prohibited	10, 63
RAILROAD COMPANY,	
notice to be served upon, when and how	60
RAILWAYS	
are highways (Const. 1870)	13, 164-173
RAILWAYS AND CANALS,	164-173
1. A railway is a road graded, having rails of iron or other material	164, 165
2. The right of way	165
3. The construction of the road; crossings at high-ways	165, 166

RAILWAYS AND CANALS — Continued.

4. Liabilities — injuries to stock, for the acts of agents, signals, management of trains.....	166, 167
5. Railway stock, shares, preferred stock, bonds, etc.....	167-171
6. The charter a grant, inviolable.....	171, 172
7. A canal defined.....	172
8. How constructed.....	172, 173
9. Navigation of.....	173
10. Tolls.....	173

REFUSAL

of office by supervisor, return of (P. O.).....	44
of office by overseer (T. O.).....	82, 83

REGULATIONS,

bridge, etc. (P. O.).....	40, 41
bridge, etc. (T. O.).....	96-102

REMEDY

for obstructing a highway, complete, at law.....	38
--	----

REMONSTRANCE,

form of (P. O.).....	33
may be made, filed and heard.....	33

REPAIRS

of highways.....	45, 49, 79-85
------------------	---------------

REPORT, (P. O.)

unfavorable, when to be made by the viewers.....	16
favorable, if it be, deposit to be refunded.....	15
survey — plat.....	34
of the viewers, favorable.....	21-24
unfavorable.....	22
of supervisor.....	54, 56
(see <i>Township Organization : Order.</i>)	

RETURNS,

sheriffs' on notice to supervisor of acceptance or refusal (see <i>Primary Organization : Accounts ; Reports</i>).....	44
of overseer to supervisor (T. O.).....	90, 91-95

RIGHT,

turn to the, if practicable.....	6, 8, 62
of eminent domain.....	154

RIVERS AND FERRIES.....155-163

1. A river is a natural stream of water.....	155
2. Rivers are either public or private, navigable or not navigable.....	155
3. The bed or soil of rivers, by whom owned.....	155, 156
4. Rivers which are navigable highways.....	156, 157
5. Private rivers.....	157
6. A ferry defined.....	157, 158
7. The franchise, a grant.....	158
8. Establishment of ferries.....	158, 159
9. A ferry franchise is an incorporeal hereditament ; it descends to heirs, and is real estate.....	159
10. The owners of ferries are common carriers ; their rights and liabilities.....	10, 11, 63
11. A bridge defined.....	159, 160

RIVERS AND FERRIES — Continued.

12. Bridges either public or private.....	160, 161
13. Toll bridges.....	162
14. The expense of bridges, how assessed.....	161, 162
15. Dedication.....	162
16. Repairs.....	162, 163
17. Highways: the law of the road applicable to them.....	163
18. Private bridges.....	163

ROAD, (P. O.)

the law of the.....	6
common carriers, etc.....	8, 10
1. Turn to the right if practicable.....	8
2. Intemperate or drunken drivers not to be employed.....	9
3. Driver guilty of becoming intoxicated on duty to be discharged; passenger may, by complaint verified by oath to the proprietor, cause the discharge.....	9, 10
4. Running horses or carriage on any occasion prohibited; a misdemeanor; penalty prescribed.....	10
5. Horses to be securely hitched with a sufficient rope or halter.....	10
6. Carriers liable for injuries in damages.....	10, 11
7. "Carriage" defined — any vehicle used for the transportation of either passengers or goods.....	11
8. This act not to affect hackney coaches in cities, nor ordinances relating to them.....	11
township organization.....	61, 65

ROADS,

supervisor to construct.....	58
damages, assessment of.....	33
on county lines, how laid out, altered or vacated.....	32
overseer to keep in repair.....	79-83

ROADS AND BRIDGES

in counties* under primary organization.....	7, 60
I. The road, common carriers, etc.....	7, 11
II. Highways, new roads, location and relocation.....	11, 41
III. The county court, or the board of county commissioners (Art. 10, § 6, Const. 1870) — jurisdiction; supervisors (of roads).....	41-51
IV. Suits for road labor and road taxes.....	52
V. Miscellaneous provisions.....	53-59
VI. The board of county commissioners invested with county court jurisdiction in such matters; repeal, etc. 59, 60 (see <i>Primary Organization</i> ; <i>Township Organization</i> .)	

ROAD TAX, (P. O.)

assessed.....	47
order.....	48, 89-92

RULES

of the road.....	6, 11, 62, 63
------------------	---------------

* An act in regard to cartways, roads and bridges in counties not under township organization. Laws 1873, Myers' Ed. p. 59. See pp. 7-60, *supra*.

An act in regard to roads and bridges in counties under township organization, approved and in force April 11, 1873. Laws 1873, Myers' Ed. p. 39. See pp. 61-151, *supra*.

SCOPE	
of this treatise stated.....	6, 7
SERVITUDE,	
a highway is a.....	3
SETTLEMENT	
by the supervisor with the county commissioners (P. O.)	54
by the overseer with the highway commissioners (T. O.)	92-94
SEWERAGE	
in highways or streets (<i>see Streets</i>).....	4
SHERIFF'S	
return of acceptance by supervisor.....	44
of refusal.....	44
compensation of, under the road law.....	59
SIDEWALKS	
are a part of the highway.....	14, 151-154
SLUICES,	
ditches, drains and water-courses to be made..	56, 57, 100-102
SPEED,	
travelers bound to drive at a moderate rate of.....	6, 11, 63
STATUTES OF ILLINOIS,	
relating to roads and bridges, act April 11, 1873.....	61-151
act April 18, 1873.....	7-60
prior legislation.....	8
STATUTES OF NEW YORK	
adopted, and their interpretation.....	7
c. 93 R. S.....	6, 7
act April 18, 1873.....	7
act April 11, 1873.....	8
STEAM	
may, by permission, be used as a motive power along the streets.....	15
STREETS AND ALLEYS.....	151-154
1. A street is a highway in a city or village; its uses, nuisances.....	151, 152
2. Special assessments upon lots for the expenses of opening, widening, improving and the like.....	152
3. The statutes and decisions in Illinois.....	152-154
4. The right of eminent domain.....	154
SUBSTITUTE	
may be provided to work out tax.....	49
SUITS	
for road labor and taxes (P. O.).....	52, 53
40. Supervisors to sue in the name of the county, and may testify; appeal lies to the circuit court.....	52
41. The forum may be that of any justice of the peace of the county.....	52
42. The proceedings are to be instituted and prosecuted in the corporate name of the county; formality and technicality as to corporate name not essential; the record may be amended to correct it if wrongly pleaded or used.....	52, 53

SUITS — Continued.

procedure prescribed (T. O.)	85-89
(see <i>Township Organization : Fines and Penalties</i>).....	85-89

SUPERVISOR OF HIGHWAYS, (P. O.)

his appointment, notice to him ; acceptance or refusal ;	
powers and duties	43-45
(see <i>Township Organization : Overseers of Highways</i>).....	79-92
to be notified of establishment of a new road, and to	
open it if he have the necessary funds	27
notice	50
notice to remove fences	38
to remove obstructions and perform labor	46
affidavit to the list	54
his report	54, 55
settlement	54
to sue in the name of "The county of ———"; he	
may testify ; appeal	52
compensation	59
list of to be made for each grand jury	58

SUPERVISOR, TOWN,

his duties under highway laws	94, 95
returns by	90, 91

SURVEY, (P. O.)

of a public road	15
of a route for a new road	21, 22
to be made by the viewers, and when	16
report, plat	34
(see <i>Township Organization</i>)	110, 112, 141, 142, 146

SURVEYOR,

the county, may administer oaths to associates	35
compensation	59
(T. O.)	146

SYSTEM, LABOR,

or tax, may be adopted (P. O.)	47
(T. O.)	74-79

TAX,

the power to	50, 51
to be paid over	150
extending	149, 150

TAX ALREADY COLLECTED,

how disposed of	60, 150
-----------------------	---------

TAXES,

highway (see <i>Township Organization : Road Tax</i>)	89, 92
--	--------

TAX LIST (P. O.)

(T. O.)	48
	75, 76

TAX, ROAD,

order assessing, (P. O.)	47, 48
(T. O.)	74, 75

TAX SYSTEM

or labor system may be adopted, (P. O.)	44
(T. O.)	74-77

TEAMS,

- supervisor may hire the necessary (P. O.) 57, 58
 overseer to do the same (T. O.) 85

“THE BOARD OF COUNTY COMMISSIONERS”

- to supersede the county court in matters relating to
 roads and bridges 59
 (see § 6, art. 10, Const. 1870.)

THE COUNTY COURT,

- its jurisdiction over county affairs 41
 (see *Board of County Commissioners, County Court,*
Board of Supervisors of the County.)

TOLL,

- taking evidence of, duty to maintain a highway

TOLL BRIDGES 176

TOWN CLERK

- to furnish lists 74

TOWN CLERK'S

- office, commissioners of highways to meet at 73

TOWNSHIP ORGANIZATION,

- roads and bridges under (*see Primary Organization*) 7, 61-151
 I. HIGHWAYS; THE ROAD; COMMON CARRIERS, ETC .. 61-65
 II. COMMISSIONERS OF HIGHWAYS 65-79
 III. OVERSEERS OF HIGHWAYS 79-83
 IV. LABOR AND COMMUTATION 84, 85
 V. FINES AND PENALTIES 85-89
 VI. HIGHWAY TAXES 89-92
 VII. ACCOUNTS 92-94
 VIII. SUPERVISORS 94, 95
 IX. MISCELLANEOUS PROVISIONS 95, 96
 X. REGULATIONS 96-102
 XI. ALTERING AND VACATING ROADS, AND LAYING OUT
 NEW ROADS 102-151
 I. HIGHWAYS; THE ROAD; COMMON CARRIERS, ETC.. 61-65
 1. Roads laid out pursuant to state or territorial
 laws, or dedicated or used for twenty years, and
 not legally vacated, declared to be public high-
 ways 61
 2. Turn to the right, unless it be out of the beaten
 tract or impracticable, or pay a fine of five dol-
 lars for every offense 61, 62
 3. Carriers of passengers prohibited from know-
 ingly employing drunken drivers, under a
 penalty of five dollars each per day 62
 4. Passenger may by oath certify a case of actual
 drunkenness to his employer, and cause the dis-
 charge of the driver 62, 63
 5. Running of horses or carriage upon any occa-
 sion prohibited, and made a misdemeanor;
 penalty, a fine not exceeding ten dollars, or
 imprisonment not exceeding sixty days 63
 6. Carriers of passengers to hitch or securely fasten
 their horses 63

TOWNSHIP ORGANIZATION — HIGHWAYS; THE ROAD;
COMMON CARRIERS, ETC.— Continued.

7. Carriers of passengers held liable for injuries..	63, 64
8. "Carriage" defined — every vehicle used for the transportation of either passengers or goods....	64
9. City ordinances relative to hacks and carriages not affected hereby; jurisdiction of justices of the peace to two hundred dollars.....	64
II. COMMISSIONERS OF HIGHWAYS.....	65-79
10. To have the care and superintendence of highways and bridges; their duties specified.....	66
1. To direct repairs of highways, and cause bridges to be built	66
2. To lay out, regulate, alter or vacate roads ..	66
3. To have highways sufficiently described of record, in the town clerk's office.....	66
4. To see that highways and bridges are kept in repair.....	66
5. To divide their town into road districts according to law	67
6. To apportion the inhabitants to such districts.....	69
7. To cause the overseers of highways to warn persons to work on highways, but not allow landmarks to be disturbed.....	69
8. To take care of the tools, implements and machinery of highway labor belonging to their town	69
9. To purchase the necessary tools, implements and machinery for such work.....	69
10. To erect and keep in repair at forks and crossings, finger or guide boards; extirpate thistles and other noxious weeds; dig and keep wells; make watering places for teams at convenient points, etc.....	69, 70
11. Their first meeting; treasurer to be chosen from their number; his duties; to give bond and file the same.....	70, 71
12. To render a detailed account to the board of town auditors.....	72, 73
13. First meeting of the commissioners to take place, according to mutual agreement, at the town clerk's office, within ten days after they are chosen; other meetings to be held as they may think proper.....	73
14. Town clerk to furnish lists filed by the overseers, upon which highway labor and road tax are to be ascertained, estimated and assessed...	74
15. Able-bodied male inhabitants, of the age of twenty-one years and upwards to fifty years, to labor on the highways not less than one nor more than three days in each year.....	74
16. Road taxes to be assessed on real and personal property	75
17. Tax lists, how to be made and filed.....	75 76

TOWNSHIP ORGANIZATION—COMMISSIONERS OF HIGHWAYS—Continued.

18. Copies to be made, authenticated and delivered to the overseers respectively	77
19. Omissions to be supplied and additions made by the overseers	77
20. Private roads may be annexed to highways, and work done thereon credited to those who perform it	77
21. Notice of the amount of road tax assessed to be posted on town house door, within ten days after the assessment	78, 79
22. Penalties for nonfeasance or misfeasance prescribed	79
III. OVERSEERS OF HIGHWAYS	79-83
23. To be elected at the annual town meeting, one for each road district, to hold office for the year	80
24. Duties of each of the overseers of highways specified	81, 82
1. He is to keep the highways in his district in order	81
2. To warn persons from whom road labor is due to perform it; see that it is performed, and if in time, receipt therefor	81
3. To collect fines and commutation money, and execute the lawful orders of the commissioners of highways	81
4. To deliver a poll list within sixteen days after his election to the town clerk	81, 82
25. Failure or refusal to serve, to vacate the office which by warrant the commissioners are to fill	82, 83
26. Warrant to be filed and town clerk to give notice of his appointment to the appointed	83
27. Penalties for nonfeasance or misfeasance prescribed	83
IV. LABOR AND COMMUTATION	84, 85
28. Overseer to give three days' notice to person assessed to work on the highways	84
29. The person notified required to work, or to commute by paying one dollar and fifty cents <i>per diem</i>	84
30. Commutation money to be paid within three days after notice served	84, 85
31. Impressment of teams for such labor	85
32. Substitute may perform the labor, under restrictions	85
33. Idlers, the unfaithful and hinderers declared offenders, and liable to be fined	85
V. FINES AND PENALTIES	85-89
34. Fines and penalties prescribed	86
35. Procedure, complaint to be made by the overseer to a justice of the peace	86
36. Justice to issue a summons	87
37. The hearing, judgment and execution	88
38. Constable to collect, and pay over to the justice	89

TOWNSHIP ORGANIZATION — FINES AND PENALTIES —
Continued.

39. Every collected fine a set-off for one day's labor ; two dollars equal to one day's work.....	89
40. Excuses of no avail ; exemption from labor or commutation, by the overseer, disallowed.....	89
VI. HIGHWAY TAXES.....	89-92
41. Resident owners to be notified ; the three days' notice ; and they may pay in road labor or in money	89, 90
42. The word "paid" to be written distinctly against the names on the list, and receipts to be given on payment.....	90
43. Returns of overseer to the supervisor (in Cook county to the county board) five days before the annual meeting of the board of supervisors....	90, 91
44. Penalties for refusal or neglect to make return prescribed	92
45. At least three-fourths of the road labor actually assessed to be actually performed by the first day of October in each year	92
VII. ACCOUNTS	92-94
46. Overseer to render to one of the commissioners of highways, on the second Tuesday next preceding the annual town meeting, under oath, an account, in writing, containing	93
1. The names of the persons assessed.....	93
2. The names of those who have worked, with the number of days, respectively	93
3. The names of those fined, and the amount of each fine.....	93
4. The names of those who have commuted, and the manner of the expenditure of commutation money	93
5. The amount of uncollected tax returned to the supervisor, as required in section forty-three, <i>supra</i>	93
47. He shall also then and there account for all moneys in hand, and pay the same over to his successor in office	94
48. Penalties for refusing or neglecting to account	94
VIII. SUPERVISORS.....	94, 95
49. The supervisor is to receive the list pursuant to section forty-four, <i>supra</i> , and lay the same before the county board	95
50. Arrearages of road tax returned to be levied and collected with the county taxes, and paid over to the commissioners of highways	95
IX. MISCELLANEOUS PROVISIONS	95, 96
51. Compensation of the overseer	95
52. Annual town meeting may require road tax to be collected only in money, to be expended by and under the direction of the commissioners.....	96
53. Town clerk to furnish to the county clerk, before the first day of September, a certified plat of the road districts in his town	96

TOWNSHIP ORGANIZATION — MISCELLANEOUS PROVISIONS — Continued.

54. In extending the road taxes the county clerk is to designate the district to which it belongs.....	96
55. County and town collectors to furnish abstract of taxes to the treasurer of the commissioners of highways	96
56. Commissioners to pay over the taxes according to the abstracts	96
X. REGULATIONS	96-102
57. Defacing guide boards, etc.....	97
58. Obstructions to highways.....	97, 98
59. Destroying or injuring bridges.....	98
60. Suits for fines and penalties.....	98
61. Fines recovered to be paid to the commissioners of highways.....	98
62. Shade and ornamental trees, hedges, etc.....	98, 99
63. Underground crossings	99
64. Fences may be connected, in certain cases, with bridges.....	99, 100
65. Public highways to be not less than fifty feet nor more than 66 feet wide.....	100
66. NOTICE—"Five dollars fine for riding or driving on this bridge faster than a walk"—may be put up.....	100
67. Fine may be imposed	100
68. Overseers may enter upon land adjacent to highways, to open ditches, drains, etc.....	100-102
XI. ALTERING AND VACATING ROADS, AND LAYING OUT NEW ROADS	102-151
69. Twelve or more freeholders to petition..	103, 104, 105
70. Requisites of the petition	105
71. Copies to be posted in three of the most public places in the vicinity.....	105-108
72. Commissioners to meet, examine and determine	108-110
73. Adjournment for, not to exceed twenty days in all; procedure prescribed.....	111
74. Petition to vacate.....	111
75. Petition for new road	111-114
76. Damages to be ascertained and order made notwithstanding an appeal from a justice of the peace.....	115, 116
77. Damages may be settled and release received from owners of damaged property.....	116, 117
78. Certificate of doings to be presented to any justice of the peace of the county asking for a jury,	118
79. The notice of application to be given to the owners	119, 120
80. The jurors and the jury	119
81. Challenge for cause; notice of trial to owners, by the justice	120
82. unknown owners; notice to be published.....	120
83. Service of the notice.....	120, 121
84. The jury sworn.....	121

TOWNSHIP ORGANIZATION—ALTERING AND VACATING
ROADS, AND LAYING OUT NEW ROADS—Continued.

85. The hearing; verdict; rules for estimating damages	121, 122
86. Separate trials to be had	123
87. Final meeting of the commissioners	123
88. All proceedings may be revoked	124
89. Order to be entered if proceedings be not re- voked	124-129
90. In cases where the damages are agreed on and right of way released, order may at once be entered	129
91. Inducements to establish, alter, widen or vacate any road may be offered to the commissioners ..	130
92. Record of the town clerk or a certified copy of papers and records <i>prima facie</i> evidence of the regularity of the prior proceedings	130
93. Private roads	130, 131
94. Two years in which to open after entry of the order; limitations	131
95. Eight months allowed to harvest crops, remove fences, etc	131
96. Persons may be paid for work done on private roads	131, 132
97. Roads on town lines; coterminous towns	132
98. Allotment to the several towns interested— the rules of	132
99. Appeal from the verdict of the jury to three supervisors; notices and allowance	132-135
100. Three supervisors to be summoned and to hear the appeal	135
101. Report of their decision	136-139
102. Costs of appeal, bond, etc.	139-140
103. Majority opinion of the supervisors to prevail,	140
104. Appeals where several towns are interested,	140, 141
105. Maintenance of roads between coterminous towns	141 142
106. Roads on state line	143
107. Bridges between several towns or counties ...	143
108. Joint contracts, how made	143
109. Contribution for expenses, how compelled ..	143, 144
110. Refusal of commissioners to act; personally liable, when	144
111. Appropriations may be had on proper applica- tion from the county to build expensive bridges	144
112. Special town meeting may be called to raise money; bonds may be issued— <i>modus operandi</i> ..	144, 145
113. Upon petition of twelve legal voters, surveyor to be employed	146
114. Establishment of a new road on the route of an established road not to vacate the prior road ..	146
115. Bridges, how to be contracted for	146
116. Road tax may be paid by work on bridges ...	147

TOWNSHIP ORGANIZATION—ALTERING AND VACATING
ROADS, AND LAYING OUT NEW ROADS—Continued.

117. When road is to pass through inclosure, sixty days' notice to be given to owner or occupant to remove the fences, etc.----- 147
118. Compensation of the commissioners of highways ----- 148
119. Highways laid out to be opened within five years, or deemed vacated ----- 148
120. The highway commissioners to ascertain the amount of money necessary for highways and bridges, and report the same to the supervisor, who shall cause the same to be submitted to the county board ----- 148, 149
121. Extending road taxes by the county clerk -- 149, 150
122. Certificate of the county clerk to the treasurer of the commissioners of highways ----- 150
123. Tax to be paid over when collected to such treasurer ----- 150
124. Commissioners of highways to furnish a list of tax-payers of each district previous to the first day of October in each year ----- 150
125. Taxes collected under the "Act in regard to roads and bridges," approved April 10, 1872, to be paid over to the treasurer of the commissioners of highways for improving roads and bridges 150
126. Act of April 10, 1872, aforesaid, repealed --- 150, 151
127. Emergent ----- 151

TRAVEL

- may slightly deviate from the thread of the road ----- 14, 62

TREASURER

- of commissioner of highways, to be elected at their first meeting, to give bond; the bond ----- 70, 71

TREES AND FRUIT

- growing on the highway belong to the owner of the fee ----- 4

TRESPASS

- by owner of the fee will lie for digging up and removing the soil, etc.----- 4

TURN

- to the right, if practicable ----- 6, 8, 62

TURNPIKES,

- toll bridges and plank roads ----- 174-176
1. A turnpike is a gate, but generally a highway over which the public have the right to travel upon payment of toll ----- 174, 175
2. The law of the road ----- 175
3. Toll bridges ----- 176
4. Plank roads ----- 176

UNFAVORABLE REPORT

- of viewers (P. O.) ----- 16-22
- of commissioners (T. O.) ----- 108-110

UNPAID TAXES,	
supervisor to sue for (P. O.)	52
overseer to sue for (T. O.)	86-89
procedure in form and substance detailed	86-89
USELESS OR BURDENSOME ROAD	
may be vacated	24, 103-105
USER,	
twenty years' acquiescence	2, 12, 31
VACANCY,	
when and how it may occur in office of supervisor, and	
how and when filled (P. O.)	45
in office of commissioner of highways (T. O.)	80
in office of overseer of highways (T. O.)	82
VERDICT	
of a jury assessing damages	33, 121, 122
VIEW,	
expenses of, to be deposited (P. O.)	14
VIEWERS (P. O.)	
may be appointed	16
order appointing	19
order appointing, for private way	30
when appointed, their powers and duties	16
to be sworn	35
their duties further prescribed	35
<i>modus operandi</i> of, suggested	19
report	21-24
compensation	59
VOTERS,	
thirty-five, residing in the county, within five miles of	
the road, to apply (<i>see Primary Organization: Free-</i>	
<i>holder</i>)	26
VOUCHERS	
should be taken and kept by the supervisor (P. O.) ...	56
should be taken and kept by the commissioner of high-	
ways	65-79
should be taken and kept by the overseer of highways ..	79-88
WAIVER	
by owner's acceptance of damages	34
WARNING	
by the supervisor (P. O.)	50
by the overseer (T. O.)	84
WATER-COURSES	
to be made	57, 100-102
WAYS,	
kinds of, specified	1
WAYS, PRIVATE	176, 178
WILLFUL INJURY	11, 64

WORK,

regulations for, prescribed (P. O.)-----	49
regulations for, prescribed (T. O.)-----	84, 85
<i>(see Labor and Commutation.)</i>	

YEARS,

twenty, essential usually to make a dedication by acquiescence-----	2, 12, 13, 61
--	---------------

THE MUNICIPAL OFFICER.

A Manual for County, City, Town, Village and Precinct Officers, and Citizens generally, whether **Under Primary or Township Organization**, in the State of Illinois, showing the practical relations of the individual to the State, and its municipal and political subdivisions, as well as the functions and powers, the rights and duties and the means and agencies of public corporations; with Rules of Order for County Boards of Supervisors, and parliamentary rules for conducting Town and other public meetings, accompanied with forms, etc.

BY EDWARD J. HILL,

Author of "The Law of Procedure,"—"Chancery," "Common Law," "Probate," etc.

Early in July, 1873, we shall publish "The Municipal Officer." It is intended to be a thoroughgoing, practical treatise, exactly what is set forth on the title-page—a **Manual not only for the public officer but the citizen.** It will contain the substance of the **Constitution** and the **Statutes**, with the **Judicial Decisions** relating to Municipal Corporations, Counties, Towns, Cities and Villages in the State of Illinois, **with all the necessary forms.** The following is the

SUMMARY OF CONTENTS:

Chapter I.—Introduction.

- Sec. I. The Elector or American Citizen.
- Sec. II. The State of Illinois and its political and municipal subdivisions.

Chapter II.—Municipal Corporations.

- Sec. I. Powers and agencies, means and duties.
- Sec. II. Taxation, Assessment, Licenses and Nuisances.
- Sec. III. Administration of justice and conservation of the peace.

Chapter III.—Counties.

- Sec. I. Introduction, History and Chronology.
- Sec. II. County Government—Two Systems:
 - I. PRIMARY ORGANIZATION:
(Dec. 12, 1778-1873).
 - 1. County Court (1778-1819).
 - 2. County Commissioners' Court (1819-1849).
 - 3. County Court (1849-1873).

- 4. The Board of County Commissioners (from 1873).

II. TOWNSHIP ORGANIZATION:

- 1. The Board of Supervisors:
(From 1849).
 - 1. Under Constitution of 1848.
 - 2. Under Constitution of 1870.

Sec. III. County Officers.

- 1. Constitutional Provisions.
- 2. The County Judge and Associate Justices of the Peace.
- 3. The Commissioners.
- 4. The Supervisors.
- 5. Sheriff and Coroner.
- 6. County Treasurer.
- 7. Clerks of the Courts and Recorder.
- 8. State's Attorney.
- 9. County Surveyor.
- 10. Justices of the Peace and Police Magistrates.
- 11. Constables.
- 12. Commissioners and Supervisors of Highways.
- 13. Assessors.
- 14. Collectors.
- 15. Miscellaneous.
 - 1. Public Administrator.
 - 2. County Attorney.
 - 3. Superintendent of Schools, etc.

(Over.)

Chapter IV.—Towns, Cities and Villages.

- Sec. I. Historical Summary.
- Sec. II. The General Act of 1872 and Amendments of 1873.
 - 1. Re-incorporation and Incorporation.
 - 2. Mayor.
 - 3. City Council.
 - 4. Elections.
 - 5. Powers of City Council.
 - 6. Powers and Duties of Officers.
 - 7. Finance.
 - 8. Assessment and Collection of Taxes.
 - 9. Special Assessments.
 - 10. Miscellaneous Provisions.
 - 11. Villages since 1872.
 - 12. Conclusion.
- Sec. III. Township Organization.
 - 1. Proceedings to Adopt.
 - 2. Powers and Rights of Towns.
 - 3. Alteration of Boundaries and Division of Towns.
 - 4. Town Meetings ; powers of Electors
 - 5. Conducting Town Meetings.
 - 6. Qualification for and Tenure of Office.
 - 7. Filling Vacancies in Town Offices.
 - 8. The Supervisor and his Duties.
 - 9. The Town Clerk and his Duties.
 - 10. 1. The Board of Auditors.
2. The Board of Health.
 - 11. Compensation of Town Officers.
 - 12. Legal Proceedings by and against Towns.
 - 13. Town Agents, Officers and Employes.
 - 14. Towns generally.

Chapter V.—Elections.

- Sec. I. For National Officers.
- Sec. II. For State Officers.
- Sec. III. For County Officers.
- Sec. IV. For Township, Precinct and District Officers, etc.
- Sec. V. On Proposed Measures ; for or against them.
- Sec. VI. Generally.

Chapter VI.—Highways.

- Sec. I. Highways and Bridges.
- Sec. II. Ferries.
- Sec. III. Railways and Canals.
- Sec. IV. Rivers.

Chapter VII.—Revenue.

- Sec. I. Taxes. 1. State. 2. Municipal.
- Sec. II. Special Assessments.
- Sec. III. Licenses.
- Sec. IV. Fines and Penalties.
- Sec. V. Funds.
- Sec. VI. The Commonwealth.

Chapter VIII.—Public Property.

- Sec. I. Real Property and Improvements.
- Sec. II. Personal Property.
- Sec. III. Generally.

Chapter IX.—Education.

- Sec. I. School Districts.
- Sec. II. Public Schools.
- Sec. III. Taxes, Expenses, etc.
- Sec. IV. Generally.

Chapter X.—Administration of Justice and Conservation of the Public Peace.

- Sec. I. Courts of Record ; Circuit and County Courts.
 - 1. At Law and in Equity.
 - 2. In Criminal Matters.
 - 3. In Probate and Conservation.
 - 4. Justices of the Peace and Police Magistrates.
 - 5. The Sheriff and Coroner.
 - 6. Constables and Police Officers.

Chapter XI.—The Poor.

Chapter XII.—Actions and Suits.

- Sec. I. By Municipal Corporations.
- Sec. II. Against Municipal Corporations.
- Sec. III. Special and Miscellaneous Proceedings.

Chapter XIII.—Miscellaneous Matters.

Chapter XIV.—Forms.

APPENDIX.

We take pleasure in calling the attention of the public authorities in your County to this work and its contents. It will be in duodecimo form, of about 600 pages, bound in Law Sheep. Price \$4.00. *To be issued July 1st, 1873.*

E. B. MYERS, Law Publisher, 93 Washington St., Chicago.

HILL'S PROBATE JURISDICTION AND PRACTICE.

The Probate Jurisdiction and Practice in the County Courts, according to the Statutes and Decisions in the State of Illinois, containing the Law of Wills, of Administration and of Guardian and Ward; being a guide for Executors, Administrators, Guardians and Conservators, in the management and settlement of Estates, with forms and precedents. By Edward J. Hill, Esq. 1 vol., 8vo. *In Press, to issue in July, 1873.*

SUMMARY OF CONTENTS:

Chapter I.—Jurisdiction.

- Sec. I. Introduction.
- Sec. II. County Courts. In Probate.

Chapter II.—Testate Estates.

- Sec. I. Wills.
- Sec. II. Probate of Wills.
- Sec. III. Executors.
 - 1. Appointment.
 - 2. Powers and Duties.
 - 2. Renunciation, Resignation and Removal.

Chapter III.—Intestate Estates.

- Sec. I. Introduction.
- Sec. II. Appointment of Administrators.
- Sec. III. Powers and Duties.
- Sec. IV. Resignation and Removal.

Chapter IV.—Estates and Persons of Infants or Minors.

- Sec. I. Infants.
- Sec. II. Appointment of Guardians.
- Sec. III. Powers and Duties. Guardian and Ward.
- Sec. IV. Resignation and Removal.

Chapter V.—Incapacitated Persons and their Estates.

- Sec. I. Idiots, Lunatics, Drunkards, etc.
- Sec. II. Appointment of Conservators.
- Sec. III. Powers and Duties.
- Sec. IV. Removal.
- Sec. V. Forms.

Chapter VI.—Personal Property.

- Sec. I. Kinds of Personal Property.
- Sec. II. In the hands of the Executor.
- Sec. III. In the hands of the Administrator.
- Sec. IV. In the hands of the Guardian.
- Sec. V. In the hands of the Conservator.

Chapter VII.—Real Property.

- Sec. I. Of the nature of Real Property.
- Sec. II. Care and disposition of by the Executor.
- Sec. III. Care and disposition of by the Administrator.
- Sec. IV. Care and disposition of by the Guardian.
- Sec. V. Care and disposition of by the Conservator.
- Sec. VI. Proceedings to divest the title of heirs and *cestuis que trust*.

Chapter VIII.—Expenses, Allowances, Claims, Legacies, and Distribution.

- Sec. I. Expenses of Administration.
- Sec. II. Claims, Proof and Allowance of.
- Sec. III. Allowances.
- Sec. IV. Legacies, Payment of, etc.

Chapter IX.—Accounts.

- Sec. I. By Executor.
- Sec. II. By Administrators.
- Sec. III. By Guardians.
- Sec. IV. Conservators.

Chapter X.—The Law of Descent.

Chapter XI.—Appeals.

Chapter XII.—Miscellaneous Matters.

Chapter XIII.—Costs and Fees.

Chapter XIV.—The Probate Record.

APPENDIX.

I.—Rules of the County Court of Cook County.

II.—Additional Forms.

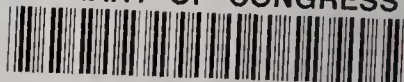
This Book will contain about 350 pages, 8vo. Price \$4.00. An indispensable work for all having occasion to transact business in Probate.

E. B. MYERS, Law Publisher, 93 Washington St., Chicago.

AUG -1 1944



LIBRARY OF CONGRESS



0 021 896 541 6